

**TAB 15**

Roxane Laboratories, Inc (James F. McIntyre)

February 26, 2009

Chicago, IL

1

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

-----X

In Re: PHARMACEUTICAL )

INDUSTRY AVERAGE WHOLESALE ) MDL No. 1456

PRICE LITIGATION ) Civil Action No.

-----X 01-12257-PBS

THIS DOCUMENT RELATES TO: )

United States of America ex )

rel. Ven-a-Care of the )

Florida Keys, Inc., et al. )

v. Boehringer Ingelheim )

Corp., et al., Civil Action )

No. 07-10248-PBS )

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The videotaped 30(b)(6) deposition of  
Roxane Laboratories, Inc., Roxane Laboratories, Inc.  
n/k/a Boehringer Ingelheim Roxane, Inc., Boehringer  
Ingelheim Pharmaceuticals, Inc., and Boehringer  
Ingelheim Corporation by JAMES F. McINTYRE

Chicago, Illinois

Thursday, February 26, 2009

Henderson Legal Services, Inc.

202-220-4158

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Roxane Laboratories, Inc (James F. McIntyre)

February 26, 2009

Chicago, IL

6 (Pages 18 to 21)

<p style="text-align: right;">18</p> <p>1 MS. RIVERA: Object to form.</p> <p>2 BY THE WITNESS:</p> <p>3 A. Yes, but there may be times I want to</p> <p>4 clarify which company we're talking about.</p> <p>5 BY MR. FAUCI:</p> <p>6 Q. I'm -- I think it's important to be as</p> <p>7 specific as possible on that, so I'll try -- when I</p> <p>8 refer to the worldwide family or the group of</p> <p>9 companies to -- we'll call them Boehringer</p> <p>10 Ingelheim. But if you need clarification, ask.</p> <p>11 At any time have you been employed by any</p> <p>12 Boehringer Ingelheim entities other than Roxane</p> <p>13 Labs or Boehringer Ingelheim Roxane?</p> <p>14 A. No.</p> <p>15 Q. What is your position?</p> <p>16 A. I'm the functional controller for</p> <p>17 operations.</p> <p>18 Q. What does the functional controller for</p> <p>19 operations do?</p> <p>20 A. In addition to -- just basically handling</p> <p>21 all the accounting activities for the manufacturing</p> <p>22 entity, we do all the financial analyses for the</p>	<p style="text-align: right;">20</p> <p>1 Q. Who?</p> <p>2 A. Met with bar -- my counsel on three</p> <p>3 different occasions.</p> <p>4 Q. By your counsel, do you mean Ms. Rivera?</p> <p>5 A. Yes.</p> <p>6 Q. Was anyone else present at any of those</p> <p>7 meetings?</p> <p>8 A. Co-counsel.</p> <p>9 Q. Can you be more specific on "co-counsel"?</p> <p>10 A. Meghan Dolan from Kirkland &amp; Ellis,</p> <p>11 Sheila Denton.</p> <p>12 Q. How long were those meetings?</p> <p>13 A. They lasted roughly eight hours, I guess,</p> <p>14 a day.</p> <p>15 Q. Each one?</p> <p>16 A. Yes.</p> <p>17 Q. Are you familiar with a company called</p> <p>18 Boehringer Ingelheim Pharmaceuticals, Incorporated?</p> <p>19 A. Yes.</p> <p>20 Q. If I refer to that company as BIPI today,</p> <p>21 will you understand that I mean Boehringer</p> <p>22 Ingelheim Pharmaceuticals --</p>
<p style="text-align: right;">19</p> <p>1 manufacturing entity, closing of the books on a</p> <p>2 monthly basis, variance analysis, anything -- any</p> <p>3 financial analysis that's rated -- related to the</p> <p>4 manufacturing function.</p> <p>5 Q. How long have you been in that position?</p> <p>6 A. Since June of 1996.</p> <p>7 Q. So is the position you occupy the same as</p> <p>8 when you were employed by Roxane Laboratories prior</p> <p>9 to 2005?</p> <p>10 A. Yes.</p> <p>11 Q. Where did you work prior to coming to</p> <p>12 Roxane?</p> <p>13 A. Prior to '96, I worked for a company</p> <p>14 called Borden, Inc. for three years; and prior to</p> <p>15 that, I worked for Kraft.</p> <p>16 Q. Is Borden, Inc. a pharmaceutical company?</p> <p>17 A. No. It's a dairy company.</p> <p>18 Q. Are you an accountant?</p> <p>19 A. Yes.</p> <p>20 Q. Did you meet with anyone in preparation</p> <p>21 for today's deposition?</p> <p>22 A. Yes.</p>	<p style="text-align: right;">21</p> <p>1 A. Yes.</p> <p>2 Q. -- Incorporated?</p> <p>3 Describe in general the business of BIPI</p> <p>4 from 1996 to the present.</p> <p>5 A. BIPI is the -- the branded side of the</p> <p>6 Boehringer Ingelheim family, so they're -- they</p> <p>7 sell branded products, patent protected products.</p> <p>8 Q. Have you ever had any responsibilities</p> <p>9 for any portions of BIPI's business?</p> <p>10 A. Yes.</p> <p>11 Q. Can you describe that?</p> <p>12 A. The -- when I was hired, I was brought on</p> <p>13 as the manufacturing controller, responsible for</p> <p>14 manufacturing. BIPI, in addition to Roxane, both</p> <p>15 had manufacturing activities. In 1996, BIPI was in</p> <p>16 the process of closing their manufacturing facility</p> <p>17 and moving the production to either a facility in</p> <p>18 Mexico or to the Roxane facility in Columbus.</p> <p>19 During that time that the manufacturing facility in</p> <p>20 -- in Ridgefield was being closed down, I provided</p> <p>21 the financial analysis related to the manufacturing</p> <p>22 operations there.</p>

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<p style="text-align: right;">22</p> <p>1 Q. When was it closed down?</p> <p>2 A. I think all but one activity was closed</p> <p>3 down by 1999.</p> <p>4 Q. The manufacturing facility in Ridgefield,</p> <p>5 did it make drugs primarily for BIPI?</p> <p>6 A. Yes.</p> <p>7 Q. Did it make any drugs for Roxane?</p> <p>8 A. No.</p> <p>9 Q. Are you familiar with a company called</p> <p>10 Boehringer Ingelheim Corporation?</p> <p>11 A. Yes.</p> <p>12 Q. If I refer to that company as BIC today,</p> <p>13 will you understand that I mean Boehringer</p> <p>14 Ingelheim Corporation?</p> <p>15 A. Yes.</p> <p>16 Q. Can you describe in general the business</p> <p>17 of BIC from 1996 to the present?</p> <p>18 A. BIC was the U.S. holding company or</p> <p>19 parent company --</p> <p>20 Q. Did --</p> <p>21 A. -- of the U.S. subsidiaries.</p> <p>22 Q. Sorry. Did it have any business of its</p>	<p style="text-align: right;">24</p> <p>1 the defendants on the designated topics; that is,</p> <p>2 12, 13, 15, 16 and 17, as those topics have been</p> <p>3 narrowed by agreements between the parties?</p> <p>4 A. Yes.</p> <p>5 Q. You could put that aside.</p> <p>6 Do you recall that in or around 2003,</p> <p>7 2004 time frame, Boehringer Ingelheim reviewed the</p> <p>8 structure of its businesses in the United States?</p> <p>9 A. Yes.</p> <p>10 Q. Did this review include BIPI?</p> <p>11 MS. RIVERA: Object to form.</p> <p>12 BY THE WITNESS:</p> <p>13 A. There were BIPI employees that were part</p> <p>14 of the project team, yes.</p> <p>15 BY MR. FAUCI:</p> <p>16 Q. Let me ask the question a different way.</p> <p>17 Was the structure of BIPI's businesses part of the</p> <p>18 review?</p> <p>19 A. No.</p> <p>20 Q. Was Roxane part of the review?</p> <p>21 A. Yes.</p> <p>22 Q. Why did they under -- defendants</p>
<p style="text-align: right;">23</p> <p>1 own, any active businesses?</p> <p>2 A. No, to my knowledge.</p> <p>3 Q. Did you ever have any responsibilities on</p> <p>4 behalf of BIC?</p> <p>5 A. No.</p> <p>6 Q. Do you understand that you've been</p> <p>7 designated by BIC, BIPI and Roxane to testify as a</p> <p>8 corporate representative on certain topics</p> <p>9 identified in the United States' notice of</p> <p>10 deposition?</p> <p>11 A. Yes.</p> <p>12 Q. I'm going to show you what the court</p> <p>13 reporter will mark as Exhibit 1, which is a copy of</p> <p>14 a notice of deposition.</p> <p>15 (WHEREUPON, a certain document was</p> <p>16 marked Exhibit McIntyre 001, for identification.)</p> <p>17 BY MR. FAUCI:</p> <p>18 Q. Take a moment to familiarize yourself</p> <p>19 with it. My first question will be: Have you seen</p> <p>20 this document?</p> <p>21 A. Yes.</p> <p>22 Q. Are you prepared to testify on behalf of</p>	<p style="text-align: right;">25</p> <p>1 undertake such a review?</p> <p>2 A. The -- the Roxane business as it was</p> <p>3 structured then was really a combination of two</p> <p>4 businesses, a manufacturing business and a -- and a</p> <p>5 sales and marketing business. The review was to</p> <p>6 try to separate those businesses to improve line of</p> <p>7 sight for management and to -- to be able to gauge</p> <p>8 and measure the performance of the manufacturing</p> <p>9 business separate from the sales and marketing</p> <p>10 business. Judge the manufacturing business based</p> <p>11 on manufacturing metrics and be able to judge the</p> <p>12 sales and marketing business based on selling --</p> <p>13 sales metrics.</p> <p>14 Q. I'd like to introduce -- have you look at</p> <p>15 what the court reporter's marked as Exhibit 2.</p> <p>16 (WHEREUPON, a certain document was</p> <p>17 marked Exhibit McIntyre 002, for identification.)</p> <p>18 BY MR. FAUCI:</p> <p>19 Q. This appears to be an April 19, 2004,</p> <p>20 series of slides. The first slide has Hermann</p> <p>21 Tetzner's name on it.</p> <p>22 A. Yes.</p>

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<p style="text-align: right;">30</p> <p>1 the difference between a -- a reporting that is in</p> <p>2 terms of legal entities as opposed to reporting in</p> <p>3 terms of businesses?</p> <p>4 A. Well, Roxane Laboratories is a legal</p> <p>5 entity. But the sales is sales and marketing, and</p> <p>6 -- and the operations piece is a manufacturing. We</p> <p>7 report separately in terms of -- of the -- the</p> <p>8 performance results for those two segments of that</p> <p>9 particular company, so we really had two businesses</p> <p>10 within that one legal entity. And that's what the</p> <p>11 organization was trying to -- reorganization was</p> <p>12 trying to fix.</p> <p>13 Q. Why was this regarded as something that</p> <p>14 needed to be fixed?</p> <p>15 A. The -- the manufacturing business, who</p> <p>16 was -- the COO was Rob Fromuth, reported directly</p> <p>17 to the CEO of the U.S.</p> <p>18 Q. Mr. Fromuth was a Roxane employee?</p> <p>19 A. Yes.</p> <p>20 Q. And who did he report to?</p> <p>21 A. Marti Carroll, CEO of the U.S. of BIC.</p> <p>22 Q. CEO -- CEO of BIC?</p>	<p style="text-align: right;">32</p> <p>1 Q. When did Marti Carroll become the CEO of</p> <p>2 BIC?</p> <p>3 A. End of 2002 or early 2003, I'm not sure.</p> <p>4 Q. Do you know who's -- who his predecessor</p> <p>5 was?</p> <p>6 A. Werner Gerstenberg.</p> <p>7 Q. And so prior to, when Mr. Gerstenberg was</p> <p>8 CEO of BIC, would Tom Russillo have reported to him</p> <p>9 then?</p> <p>10 A. Yes, I would suspect so.</p> <p>11 Q. The second paragraph reads, "This system</p> <p>12 often does not convey clearly the performance of</p> <p>13 our businesses and leads to complexity in</p> <p>14 interpreting how each business is faring. The</p> <p>15 accounting reconciliations between the legal</p> <p>16 entities and the businesses reduce but do not</p> <p>17 remove this complexity." Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. What is an accounting reconciliation?</p> <p>20 A. To identify -- basically identifying the</p> <p>21 costs that are related to the marketing side of the</p> <p>22 business versus the manufacturing side of the</p>
<p style="text-align: right;">31</p> <p>1 A. Yes. And he was responsible for</p> <p>2 operations, our manufacturing.</p> <p>3 Q. I believe the question I had asked</p> <p>4 earlier was: Why was this situation regarded as a</p> <p>5 problem that needed to be fixed?</p> <p>6 A. Well, the sales and marketing side of the</p> <p>7 business, who was the vice president or general</p> <p>8 manager of the -- the -- the multi-source or the</p> <p>9 generic business for Roxane Laboratories, reported</p> <p>10 to someone different.</p> <p>11 Q. Who was that person? Who -- who was the</p> <p>12 person in charge of the marketing and sales of</p> <p>13 Roxane Laboratories?</p> <p>14 A. Paul Kersten.</p> <p>15 Q. When was Mr. Kersten in charge of that?</p> <p>16 A. Oh, at least since 2001. I don't know if</p> <p>17 it goes back any further than that.</p> <p>18 Q. And who did he report to?</p> <p>19 A. He reports to -- at that time, 2001, Tom</p> <p>20 Russillo.</p> <p>21 Q. Do you know who Mr. Russillo reported to?</p> <p>22 A. Marti Carroll.</p>	<p style="text-align: right;">33</p> <p>1 business.</p> <p>2 Q. What do you mean, "identifying"?</p> <p>3 A. I'm sorry?</p> <p>4 Q. Can you clarify what you mean by</p> <p>5 "identifying the" --</p> <p>6 A. If we --</p> <p>7 Q. -- "costs"?</p> <p>8 A. -- want to separate, we can identify</p> <p>9 which costs go with the sales -- sales side of the</p> <p>10 business versus which costs go with the</p> <p>11 manufacturing side of the business. By having</p> <p>12 those two legal entities together, that was a diff</p> <p>13 -- that was a challenge.</p> <p>14 Q. When would an accounting reconciliation</p> <p>15 have been performed?</p> <p>16 A. Every month.</p> <p>17 Q. Do you know if Roxane and BIPI had their</p> <p>18 own internal accounting systems?</p> <p>19 A. Roxane and BIPI -- beginning --</p> <p>20 MS. RIVERA: Object to form. Sorry.</p> <p>21 MR. FAUCI: It's all right.</p> <p>22 BY THE WITNESS:</p>

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<p style="text-align: right;">34</p> <p>1 A. Beginning in December of 2000, we were on 2 the same system, but we were separate legal 3 entities. So within that system, we had our own 4 accounting -- 5 BY MR. FAUCI: 6 Q. Separate -- 7 A. -- records. 8 Q. Separate accounting staffs? 9 A. In part, yes. Before 2001, yes, there 10 was completely separate accounting staffs. 11 Q. And after 2001? 12 A. After 2001, some of the accounting was 13 centralized with BIPI as a central service and that 14 charge -- and they were charged back -- Roxane was 15 charged back for that service. 16 Q. What do you mean, "Roxane was charged 17 back for that service"? 18 A. The costs -- the costs associated with 19 performing that accounting service for Roxane was 20 charged back to the Roxane legal entity. 21 Q. I'll have some more questions about that 22 later. I think we'll stick with this document now.</p>	<p style="text-align: right;">36</p> <p>1 Q. And how did that represent a change to 2 Boehringer Ingelheim's businesses in the U.S.? 3 A. Well, BVL was another generic company 4 that had a very distinct product line. Their 5 technology was different than any other 6 technologies within the Boehringer family of 7 companies. 8 Q. I don't know if I've asked this, but 9 "BVL" stands for Ben Venue Labs? 10 A. Yes. 11 Q. Was Ben Venue Labs part of this legal 12 entity discussion? 13 A. No. 14 Q. The next bullet point down says, the 15 "rationalization of the RLI business," open 16 parentheses, "allocation to BIPI and" Ben Venue -- 17 "and BVL," close parentheses. Do you see that? 18 A. Yes. 19 Q. How was RLI's business allocated to BIPI? 20 MS. RIVERA: Object to form. 21 BY THE WITNESS: 22 A. I'm not sure what that means, 'cause it</p>
<p style="text-align: right;">35</p> <p>1 Moving down on this slide, it says, "The 2 purpose of the proposed restructuring is, 3 therefore, to align the U.S. organization with the 4 actual businesses." Do you see that? 5 A. Yes. 6 Q. What steps were taken to align the U.S. 7 organization with the actual businesses? 8 A. Well, that's what the reorganization was 9 all about, was to separate the Roxane legal entity 10 into the two business units that were a part of 11 that, the manufacturing business unit and the sales 12 business unit. 13 Q. If I can direct your attention to the 14 next page, the slide on the top. Do you see where 15 it lists various changes to the U.S. business over 16 time? 17 A. Yes. 18 Q. What is "the acquisition of BVL"? 19 A. BVL was a company that was acquired by 20 Boehringer Ingelheim in 1997. 21 Q. Is that Ben Venue Labs? 22 A. Yes, it is.</p>	<p style="text-align: right;">37</p> <p>1 wasn't allocated to BIPI. 2 BY MR. FAUCI: 3 Q. Sitting here today, do you have a sense 4 of what that bullet point means? 5 A. No, I don't. 6 Q. Skipping down two bullet points, it says, 7 "introduction of the shared services concept." 8 A. Yes. 9 Q. What is the shared service and con -- 10 services concept? 11 A. That some -- or certain services are 12 centralized under the BIPI umbrella, but they 13 perform services and charge those services back to 14 the subsidiaries, similar to what I just mentioned 15 about the accounting activities. 16 Q. So this is separate from the Boehringer 17 Ingelheim Services Center? 18 A. No, I think it's making reference to the 19 Boehringer Ingelheim Services Center. 20 Q. I'm just trying to be clear. Are you 21 familiar with an entity known as the Boehringer 22 Ingelheim Services Center?</p>

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<p style="text-align: right;">38</p> <p>1 A. Yes.</p> <p>2 Q. Can we call that BISC?</p> <p>3 A. Yes.</p> <p>4 Q. Is BISC a separate entity than BIPI?</p> <p>5 A. At that time, yes.</p> <p>6 Q. Were there shared services that were</p> <p>7 located in BIPI?</p> <p>8 MS. RIVERA: Object to form.</p> <p>9 BY THE WITNESS:</p> <p>10 A. Shared services that were located in</p> <p>11 BIPI? Yes.</p> <p>12 BY MR. FAUCI:</p> <p>13 Q. And were there shared services that were</p> <p>14 housed in the BISC?</p> <p>15 A. Yes.</p> <p>16 Q. Which shared services were in BIPI?</p> <p>17 A. The accounting that I previously</p> <p>18 mentioned, the -- I believe at that time tax was</p> <p>19 part of BIPI, legal services, I believe, were part</p> <p>20 of BIPI. Those are a couple that come to mind.</p> <p>21 Q. And so --</p> <p>22 A. HR and IT services.</p>	<p style="text-align: right;">40</p> <p>1 A. As far as I know, tax since I've been</p> <p>2 with the company in '96, so.</p> <p>3 Q. Legal?</p> <p>4 A. Since the beginning of my tenure.</p> <p>5 Q. HR?</p> <p>6 A. Again, since the beginning of my tenure.</p> <p>7 Q. And IT?</p> <p>8 A. Yes.</p> <p>9 Q. Beginning of your --</p> <p>10 A. Beginning --</p> <p>11 Q. -- tenure?</p> <p>12 A. -- of tenure.</p> <p>13 Q. And so I guess my question, the time</p> <p>14 frame is from 1996 to the present. Those various</p> <p>15 functions, accounting, tax, legal, HR, IT, were</p> <p>16 those departments composed of BIPI employees?</p> <p>17 A. Yes, the best of my knowledge.</p> <p>18 Q. And those departments had</p> <p>19 responsibilities on behalf of Roxane?</p> <p>20 A. They were centralized services that were</p> <p>21 performed by Roxane -- or for Roxane and charged</p> <p>22 back to Roxane.</p>
<p style="text-align: right;">39</p> <p>1 Q. So those departments would be housed in</p> <p>2 Connecticut?</p> <p>3 A. Yes.</p> <p>4 Q. And they'd be composed of BIPI employees?</p> <p>5 MS. RIVERA: I object to form, and I</p> <p>6 don't know if we can specify a time frame, 'cause -</p> <p>7 - just figure out what time frame we're talking</p> <p>8 about.</p> <p>9 BY MR. FAUCI:</p> <p>10 Q. When did the shared services concept come</p> <p>11 into being?</p> <p>12 A. Specifically relating to the BISC?</p> <p>13 Q. No, specifically related to those</p> <p>14 services that were located at BIPI.</p> <p>15 A. Well, it depends on the function.</p> <p>16 Q. Why don't we go function by function</p> <p>17 then.</p> <p>18 A. Okay.</p> <p>19 Q. Do you know when a shared services</p> <p>20 function for accounting came into being at BIPI?</p> <p>21 A. 2001.</p> <p>22 Q. Tax?</p>	<p style="text-align: right;">41</p> <p>1 Q. What type of services would be located in</p> <p>2 the BISC?</p> <p>3 A. The heavy transactional type services;</p> <p>4 accounts payable, payroll, customer service,</p> <p>5 accounts receivable.</p> <p>6 Q. Can you try and distinguish for me the</p> <p>7 types of work that would be done -- the</p> <p>8 transactional services that would be done in the</p> <p>9 BISC from the accounting work that was done by BIPI</p> <p>10 staff?</p> <p>11 A. Well, the BISC related activities were</p> <p>12 primarily more clerical level activities, heavy</p> <p>13 transactions, processing invoices and that kind of</p> <p>14 thing,, whereas the -- the accounting service were</p> <p>15 higher level, general accounting type functions</p> <p>16 with professionals mainly.</p> <p>17 Q. If I can direct your attention to the</p> <p>18 next page of the same Exhibit 2. It shows a</p> <p>19 organizational chart of the Boehringer Ingelheim</p> <p>20 Corporation and its 100 percent owned subsidiaries,</p> <p>21 and it's its current structure as of April 19,</p> <p>22 2004, do you see that?</p>

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12 (Pages 42 to 45)

<p style="text-align: right;">42</p> <p>1 A. Yes.</p> <p>2 Q. And do you see that various entities are</p> <p>3 listed as 100 percent owned subsidiaries of BIC,</p> <p>4 including BIPI and Roxane?</p> <p>5 A. Yes.</p> <p>6 Q. And do you see that under BIPI, there's a</p> <p>7 note that says, quote, "Hidden," end quote,</p> <p>8 "corporate functions such as HR, legal, IT, F&amp;A"?</p> <p>9 A. Yes.</p> <p>10 Q. Does that reflect the discussion we had a</p> <p>11 few moments ago, that some of these shared services</p> <p>12 for the various Boehringer Ingelheim entities were</p> <p>13 located in BIPI?</p> <p>14 A. I don't know specifically what's meant by</p> <p>15 the term "hidden."</p> <p>16 Q. Does this note comport with your</p> <p>17 recollection, though, that these functions were</p> <p>18 located within BIPI but were provided for the</p> <p>19 broader corporate family?</p> <p>20 MS. RIVERA: Object to form.</p> <p>21 BY THE WITNESS:</p> <p>22 A. Yes.</p>	<p style="text-align: right;">44</p> <p>1 foundation and beyond the scope of the subpoena.</p> <p>2 If you know the answer, you can answer.</p> <p>3 BY MR. FAUCI:</p> <p>4 Q. You may answer.</p> <p>5 A. There's one attorney that's part of</p> <p>6 Roxane now --</p> <p>7 Q. Who is that?</p> <p>8 A. -- part of BIRI actually, is part of</p> <p>9 BIRI.</p> <p>10 Q. Who is that?</p> <p>11 A. Andrea Kochensparger.</p> <p>12 Q. When did she -- when was she hired?</p> <p>13 A. Around 2005, I think.</p> <p>14 Q. You can keep that one handy 'cause we're</p> <p>15 probably going to go back to that, but let me show</p> <p>16 you what the court reporter will mark as Exhibit 3.</p> <p>17 (WHEREUPON, a certain document was</p> <p>18 marked Exhibit McIntyre 003, for identification.)</p> <p>19 BY MR. FAUCI:</p> <p>20 Q. It's a lengthy document, so take a moment</p> <p>21 to familiarize yourself, and look up when you're</p> <p>22 ready.</p>
<p style="text-align: right;">43</p> <p>1 BY MR. FAUCI:</p> <p>2 Q. What is "F&amp;A"?</p> <p>3 A. I believe it's fina -- finance and</p> <p>4 accounting --</p> <p>5 Q. Finance and accounting.</p> <p>6 A. -- but I don't know that for sure.</p> <p>7 Q. How many people, to the best of your</p> <p>8 knowledge, were located in the finance and</p> <p>9 accounting group at BIPI?</p> <p>10 A. I really don't know.</p> <p>11 Q. Do you have a sense of how many were in</p> <p>12 the legal group?</p> <p>13 A. No.</p> <p>14 Q. And did Roxane have its own legal</p> <p>15 department?</p> <p>16 A. Can you reference a time frame?</p> <p>17 Q. At any time from 1996 to the present, do</p> <p>18 you know if Roxane had its -- did Roxane -- let me</p> <p>19 strike that.</p> <p>20 At any time from 1996 to the present, did</p> <p>21 Roxane have its own legal department?</p> <p>22 MS. RIVERA: I object to form and</p>	<p style="text-align: right;">45</p> <p>1 If it helps, most, if not all, of my</p> <p>2 questions will be about the sixth page of the</p> <p>3 document, which is a chart lists, "Current Support</p> <p>4 Structures By Functional Area."</p> <p>5 A. Okay.</p> <p>6 MR. FAUCI: For the record, this document</p> <p>7 is a lengthy document. It's entitled, "Legal</p> <p>8 Entity Discussion - Executive Summary," it's dated</p> <p>9 November 17, 2003, and the name underneath it is</p> <p>10 James P. Mellody.</p> <p>11 BY MR. FAUCI:</p> <p>12 Q. Do you know who Mr. Mellody is?</p> <p>13 A. Yes.</p> <p>14 Q. Who is he?</p> <p>15 A. He's vice president of sale -- purchasing</p> <p>16 and the project leader on this particular project.</p> <p>17 Q. He's VP of purchasing for which entity?</p> <p>18 A. BIPI.</p> <p>19 Q. Did he have any responsibilities on</p> <p>20 behalf of Roxane?</p> <p>21 A. No.</p> <p>22 Q. And do you know if he worked for BIC?</p>

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13 (Pages 46 to 49)

<p style="text-align: right;">46</p> <p>1 A. I don't know.</p> <p>2 Q. Do you know why he was project leader for</p> <p>3 this project?</p> <p>4 A. No, I don't know specifically why he was</p> <p>5 project leader for this particular project. I am -</p> <p>6 - I'm aware that Mr. Mellody has good project</p> <p>7 management skills, and that may have been why he</p> <p>8 was chosen to lead this particular project.</p> <p>9 Q. Both BIPI and Roxane are owned by BIC, is</p> <p>10 that correct?</p> <p>11 A. That's correct.</p> <p>12 Q. Do you have any reason why a BIPI</p> <p>13 employee would be in charge of a project discussing</p> <p>14 the reorganization of its sister corporation,</p> <p>15 Roxane?</p> <p>16 A. Well, Mr. Mellody was the project leader.</p> <p>17 The -- the project team that was reviewing and</p> <p>18 doing all the analysis of the various options and</p> <p>19 scenarios was made up of employees from all the</p> <p>20 legal entities.</p> <p>21 Q. Looking at page six, it's entitled,</p> <p>22 "Current Support Structure by Functional Area." Do</p>	<p style="text-align: right;">48</p> <p>1 13, I believe. But I object as beyond the scope</p> <p>2 for any, you know, detailed questions about the</p> <p>3 shared services beyond that connection. So</p> <p>4 anything Mr. McIntyre testifies to in that regard</p> <p>5 would be in his personal capacity.</p> <p>6 BY MR. FAUCI:</p> <p>7 Q. Mr. McIntyre, the 2005 reorg, the process</p> <p>8 that led to that, was that called the "Legal Entity</p> <p>9 Project"?</p> <p>10 A. I don't know specifically that that was</p> <p>11 the title, but --</p> <p>12 Q. You turn to the first page of this</p> <p>13 document, do you see that this is "Legal Entity</p> <p>14 Discussion"?</p> <p>15 A. Yes.</p> <p>16 Q. It is your understanding that this series</p> <p>17 of slides relates to the -- a discussion of whether</p> <p>18 or not and how to divide the Roxane business?</p> <p>19 A. Yes.</p> <p>20 Q. I think my question, then, was: Is it</p> <p>21 your understanding that -- or did Roxane and BIPI</p> <p>22 share a common contracting function?</p>
<p style="text-align: right;">47</p> <p>1 you see that?</p> <p>2 A. Yes.</p> <p>3 Q. Do you see where it says, "Contracting,"</p> <p>4 the second bullet down?</p> <p>5 A. Yes.</p> <p>6 Q. "Services/Support Currently Provided," in</p> <p>7 that column, it says, "Contracting," open</p> <p>8 parentheses, "including VA, slash, PHS and</p> <p>9 Medicaid," close parentheses, "pricing and</p> <p>10 reporting services for BIPI and RLI." And do you</p> <p>11 see that?</p> <p>12 A. Yes.</p> <p>13 Q. Did BIPI and RLI share a common</p> <p>14 contracting function?</p> <p>15 MS. RIVERA: Hold on. I just want to put</p> <p>16 a objection on the record. I object that the</p> <p>17 questions -- detailed questions about the shared</p> <p>18 services aspects are beyond the scope of the</p> <p>19 subpoena topics that Mr. McIntyre has been</p> <p>20 designated to testify about.</p> <p>21 As they relate to the 2005 corporate</p> <p>22 reorg, then I can see that that's related to topic</p>	<p style="text-align: right;">49</p> <p>1 MS. RIVERA: And again I just want to</p> <p>2 make sure it's clear for the record that detailed</p> <p>3 questions about the shared services outside the</p> <p>4 context of how they relate to the legal entity</p> <p>5 reorganization in 2005, I object to is beyond the</p> <p>6 scope of the subpoena.</p> <p>7 But go ahead and answer, Jim.</p> <p>8 BY THE WITNESS:</p> <p>9 A. Okay. Well, I think it's -- this, to my</p> <p>10 knowledge, the -- that it was shared, but it was</p> <p>11 charged back to the individual companies, just like</p> <p>12 all these other shared services that are listed on</p> <p>13 this particular page that we've already discussed.</p> <p>14 BY MR. FAUCI:</p> <p>15 Q. Thank you. So turning your attention</p> <p>16 back to Exhibit 2 -- actually, just more generally,</p> <p>17 you've said earlier that these various services</p> <p>18 were charged back to Roxane?</p> <p>19 A. Yes.</p> <p>20 Q. What does that mean?</p> <p>21 A. It means the cost of performing that</p> <p>22 service was -- was charged to Roxane and reflected</p>

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14 (Pages 50 to 53)

<p style="text-align: right;">50</p> <p>1 in their cost.</p> <p>2 Q. Was that done annually, quarterly?</p> <p>3 A. That was done monthly.</p> <p>4 Q. Was Roxane billed?</p> <p>5 A. I don't --</p> <p>6 MS. RIVERA: Object to form.</p> <p>7 BY THE WITNESS:</p> <p>8 A. I don't know that there was a specific</p> <p>9 invoice created, but we were all in the same</p> <p>10 system, so it was able to -- it was all done within</p> <p>11 the system.</p> <p>12 BY MR. FAUCI:</p> <p>13 Q. On an accounting basis?</p> <p>14 A. Yes.</p> <p>15 Q. How were the amounts to be charged back</p> <p>16 determined?</p> <p>17 A. It depends on the service. There are</p> <p>18 various drivers determined for each service.</p> <p>19 Q. What's -- I'm sorry, go ahead.</p> <p>20 A. At the beginning of the year, the service</p> <p>21 provider functions, which is basically this list,</p> <p>22 where the -- would -- would develop their annual</p>	<p style="text-align: right;">52</p> <p>1 that were estimated to be used within each legal</p> <p>2 entity, the -- the legal entities would -- would be</p> <p>3 charged back an hourly -- based on an hourly rate.</p> <p>4 But they'd -- they would have first -- first right</p> <p>5 of -- right of refusal on the budget.</p> <p>6 Q. When was the budget compiled?</p> <p>7 A. At the beginning of the budget process.</p> <p>8 Q. Was it a yearly budget?</p> <p>9 A. Yes.</p> <p>10 Q. Would the budgets contain projections for</p> <p>11 how much -- what percentage of the legal services</p> <p>12 would go to Roxanne, what percent would go to BIPI?</p> <p>13 A. Yes.</p> <p>14 Q. What were those projections based on?</p> <p>15 A. Based on historical average hours. And</p> <p>16 then what would happen is on a -- on an ongoing</p> <p>17 basis throughout the year, they would be trued up</p> <p>18 based on if -- if one legal entity was using more</p> <p>19 of a service than another, they would true that up</p> <p>20 so that the -- the appropriate legal entity was</p> <p>21 charged by the end of the year.</p> <p>22 Q. Did personnel in the legal department log</p>
<p style="text-align: right;">51</p> <p>1 operating budgets, and then based on whatever the</p> <p>2 serve -- whatever the drivers are for a certain</p> <p>3 activity, there would be a rate established, and</p> <p>4 then each of the legal entities would be charged</p> <p>5 back based on that rate and a -- and the amount of</p> <p>6 usage of the service they -- they had.</p> <p>7 Q. Let's try and narrow it down. Let's</p> <p>8 stick with legal.</p> <p>9 A. Okay.</p> <p>10 Q. Who determined the -- well, if you could</p> <p>11 walk me through the process, maybe just focusing on</p> <p>12 legal, about how Roxane was charged for those</p> <p>13 services.</p> <p>14 A. The legal department would -- would</p> <p>15 develop their annual operating budget, they would</p> <p>16 present it to all the receivers of the legal</p> <p>17 services, the -- those -- the -- the receivers of</p> <p>18 that service, so basically the legal entities,</p> <p>19 would -- would have approve -- would be able --</p> <p>20 would -- would approve that particular budget or</p> <p>21 challenge that budget.</p> <p>22 And then based on the number of hours</p>	<p style="text-align: right;">53</p> <p>1 how much of their time was spent performing tasks</p> <p>2 on behalf of each entity?</p> <p>3 A. I don't --</p> <p>4 MS. RIVERA: Object --</p> <p>5 BY THE WITNESS:</p> <p>6 A. -- know.</p> <p>7 MS. RIVERA: -- to form and foundation.</p> <p>8 BY THE WITNESS:</p> <p>9 A. I don't know for sure if they did that.</p> <p>10 BY MR. FAUCI:</p> <p>11 Q. So how was it trued up? What was the --</p> <p>12 what was the mechanism for deciding whether or not</p> <p>13 this projection was accurate for a given month or</p> <p>14 quarter?</p> <p>15 MS. RIVERA: Object to form and</p> <p>16 foundation and again entire line of questioning</p> <p>17 beyond the scope of the subpoena.</p> <p>18 But if you know, Jim.</p> <p>19 BY THE WITNESS:</p> <p>20 A. I -- I don't know specifically.</p> <p>21 MR. ANDERSON: This is Jarrott Anderson.</p> <p>22 And I want to note for the record that it's the</p>

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19 (Pages 70 to 73)

<p style="text-align: right;">70</p> <p>1 background noise coming from the speakerphone, not 2 stenographically recorded.) 3 MR. FAUCI: I believe we're on Exhibit 4 No. 5. 5 (WHEREUPON, a certain document was 6 marked Exhibit McIntyre 005, for identification.) 7 BY MR. FAUCI: 8 Q. It's an October 9, 2003, e-mail from 9 Ursula Bartels to Jim Mellody, subject is: 10 "Surfacing issues in the multisource 11 restructuring." Are you familiar with this 12 document? 13 A. No. 14 Q. Do you know who Ms. Bartels is? 15 A. At that time, she was head legal counsel 16 for Boehringer Ingelheim. 17 Q. I'm looking at the third paragraph down, 18 the second line, Ms. Bartels writes, "Presently, 19 our patent department is responsible for Roxane 20 patent work." Do you see that? 21 A. Yes. 22 Q. What patent work did Roxane require?</p>	<p style="text-align: right;">72</p> <p>1 A. Yes. 2 Q. And do you remember that we discussed the 3 Ipratropium Bromide was the generic equivalent of 4 Atrovent? 5 A. Yes. 6 Q. And that Atrovent was a BIPI product? 7 A. Correct. 8 Q. Are you aware that in 1996 Roxane 9 launched Ipratropium Bromide several months in 10 advance of the expiration of patent exclusivity for 11 Atrovent? 12 A. Yes. 13 Q. Do you know whether Roxane obtained from 14 BIPI a license to preemptively launch Ipratropium 15 Bromide? 16 A. I'm aware that they paid a royalty. 17 Q. What do you mean, "they paid a royalty"? 18 A. It paid an 11 percent royalty to BIPI in 19 order to -- to sell Ipratropium Bromide. 20 Q. How was that determined, 11 percent? 21 A. Earlier -- early agreements between BIPI 22 and -- and -- and BII at -- that negotiated royalty</p>
<p style="text-align: right;">71</p> <p>1 A. I don't know. 2 MS. RIVERA: I'm sorry, what was your 3 question? 4 MR. FAUCI: What patent work did Roxane 5 require? 6 BY MR. FAUCI: 7 Q. Did Roxane pay BIPI for work done by 8 BIPI's patent department? 9 A. If the patent department did work, then 10 Roxan -- it would've been charged back to Roxane. 11 I don't know that they did any patent work. I'm 12 not familiar with what they would have done. 13 Q. And that charge back would have been 14 similar -- 15 A. Similar to all the others we've 16 discussed. 17 (WHEREUPON, there was a short 18 interruption.) 19 BY MR. FAUCI: 20 Q. A little while ago I asked you a few 21 questions about Ipratropium Bromide, do you 22 remember that?</p>	<p style="text-align: right;">73</p> <p>1 percentage, and that had been validated by outside 2 third-party consultants, that it was arm's length. 3 Q. I'm sorry, what is "BII"? 4 A. Boehringer Ingelheim International. 5 Q. What is that? 6 A. It's the parent, German parent. 7 Q. And so there was royalty agreements 8 between BII and BIPI? 9 A. Yes. 10 Q. And those were at 11 percent? 11 A. Ten or 11 percent. Ten percent, I think. 12 Q. Who would be paying royalty -- would BIPI 13 be paying royalties to BII, or vice versa? 14 A. Depends on which product, but BIPI -- and 15 in the case of Ipratropium Bromide, BIPI was paying 16 BII. 17 Q. Do you mean in the case of Atrovent? 18 A. Yes. Atrovent, yeah. 19 Q. And so BII held the patent for Atrovent? 20 A. Yes. 21 Q. And BIPI paid BII 11 percent royalty? 22 A. Ten or 11. I'm not --</p>

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20 (Pages 74 to 77)

<p style="text-align: right;">74</p> <p>1 Q. I'm -- I'm talking about the relationship</p> <p>2 between Roxane and BIPI.</p> <p>3 A. Uh-huh.</p> <p>4 Q. We've established that Ipratropium</p> <p>5 Bromide is the generic equivalent of Atrovent.</p> <p>6 Roxane paid BIPI the same 11 or -- ten or 11</p> <p>7 percent royalty that BIPI in turn paid to BIII --</p> <p>8 A. Yes.</p> <p>9 Q. -- BII?</p> <p>10 A. Yes.</p> <p>11 Q. Was there anything done to establish that</p> <p>12 ten or 11 percent was an appropriate royalty rate</p> <p>13 for a generic manufacturer to pay the holder of a</p> <p>14 branded patent?</p> <p>15 A. Third-party consultants were brought in</p> <p>16 to -- to validate that that was an arm's length</p> <p>17 rate.</p> <p>18 Q. Who?</p> <p>19 A. At that time, KPMG.</p> <p>20 Q. Is that the same auditing firm that</p> <p>21 established that 11 percent was an appropriate</p> <p>22 royalty rate as between BIPI and BIII?</p>	<p style="text-align: right;">76</p> <p>1 document?</p> <p>2 A. No.</p> <p>3 Q. Do you see the --</p> <p>4 MR. FAUCI: For the record, this document</p> <p>5 says, "For Internal Use Only. Why stay with Roxane</p> <p>6 Ipratropium Bromide?"</p> <p>7 BY MR. FAUCI:</p> <p>8 Q. The bottom paragraph on the first page,</p> <p>9 can you read the first sentence, starting with</p> <p>10 "Roxane launched."</p> <p>11 A. "Roxane launched Ipratropium Bromide</p> <p>12 eight months in advance of generic availability."</p> <p>13 Q. And then can you read the sentence</p> <p>14 starting with, "This strategy cost."</p> <p>15 A. "This strategy cost the innovator company</p> <p>16 a lot of money."</p> <p>17 Q. Do you know who Shelly Berkle is?</p> <p>18 A. Yes.</p> <p>19 Q. Who's Mr. Berkle?</p> <p>20 A. At the time -- he's no longer with the</p> <p>21 company, but at the time, he was head of marketing.</p> <p>22 Q. For --</p>
<p style="text-align: right;">75</p> <p>1 A. I don't know that, that they were</p> <p>2 involved in.</p> <p>3 Q. And so this ten or 11 percent was paid by</p> <p>4 Roxane for the life of Ipratropium Bromide?</p> <p>5 MS. RIVERA: Object to form.</p> <p>6 BY THE WITNESS:</p> <p>7 A. Until the product was discontinued, yes.</p> <p>8 BY MR. FAUCI:</p> <p>9 Q. Okay. What -- my questions earlier --</p> <p>10 let's introduce an exhibit.</p> <p>11 MR. FAUCI: Which exhibit are we on?</p> <p>12 (WHEREUPON, a certain document was</p> <p>13 marked Exhibit McIntyre 006, for identification.)</p> <p>14 MS. DENTON: What exhibit are we on?</p> <p>15 MR. FAUCI: Six.</p> <p>16 MS. RIVERA: Six.</p> <p>17 MS. DENTON: I thought this was six.</p> <p>18 MS. RIVERA: That was five.</p> <p>19 MR. FAUCI: That was five.</p> <p>20 MS. DENTON: Okay.</p> <p>21 BY MR. FAUCI:</p> <p>22 Q. Have you -- are you familiar with this</p>	<p style="text-align: right;">77</p> <p>1 A. For --</p> <p>2 Q. -- who?</p> <p>3 A. For BIPI.</p> <p>4 Q. I'm going to read you a very brief</p> <p>5 section from Mr. Berkle's October 31, 2008,</p> <p>6 deposition in Florida, page 148. Mr. Berkle says</p> <p>7 in reference to the decision to allow Roxane to</p> <p>8 launch Ipratropium Bromide preemptively, that this</p> <p>9 cost BIPI money. I'll read you what he says.</p> <p>10 "Answer: Again, in the context that</p> <p>11 Roxane preemptively launched Ipratropium prior to</p> <p>12 any other generic competitors had a cost from a</p> <p>13 BIPI perspective. It allowed sales for the Roxane</p> <p>14 product at a lesser price than the branded price at</p> <p>15 a time when Atrovent still was patent protected."</p> <p>16 MS. RIVERA: I'm --</p> <p>17 BY MR. FAUCI:</p> <p>18 Q. Do you see that?</p> <p>19 MS. RIVERA: Jeff, can you tell me where</p> <p>20 you are?</p> <p>21 MR. FAUCI: Oh, sure. I'm on page 148.</p> <p>22 Did I give you the right --</p>

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21 (Pages 78 to 81)

<p style="text-align: right;">78</p> <p>1 MS. RIVERA: Yeah, I was just several 2 pages in. 3 MR. FAUCI: I'm on the top paragraph. 4 MS. RIVERA: Okay. 5 MR. FAUCI: I'll read it again. 6 BY MR. FAUCI: 7 Q. Mr. Berkle says: "Again, in the context 8 that Roxane preemptively launched Ipratropium prior 9 to any other generic competitors had a cost from a 10 BIPI perspective. It allowed sales for the Roxane 11 product at a lesser price than the branded price at 12 a time when Atrovent still was patent protected." 13 My question to you is: Did Roxane pay 14 any money to BIPI for the right to market 15 Ipratropium Bromide at a time when BIPI still had a 16 patent protection for Atrovent? 17 A. They paid the 11 percent royalty. 18 Q. The same 11 percent royalty they paid 19 after Atrovent was no longer patent protected? 20 A. Yes. 21 MR. FAUCI: What are we on, Exhibit 7? 22 I'm going to introduce Exhibit 7.</p>	<p style="text-align: right;">80</p> <p>1 She was -- I don't know exact -- I don't recall her 2 exact position at this time. 3 Q. It's a e-mail. The subject of the e-mail 4 is: "Atrovent UDV," and then it says, "AM11," 5 slash, "US." Ms. Maloney writes, "BIPI is the 6 holder for the Atrovent NDA. Roxane distributes 7 the generic product Ipratropium Bromide legally out 8 of the NDA. Also, Novation distributes Ipratropium 9 Bromide out of the NDA. All three products are 10 manufactured by Roxane." Do you see that? 11 A. Yes. 12 Q. Does this refresh your recollection as to 13 whether at least by 1999 Roxane had filed an ANDA 14 for Ipratropium Bromide UDV? 15 A. It doesn't say that they filed an ANDA. 16 Q. And it actually says that Roxane 17 distributes the generic product out of the NDA, 18 which was held by BIPI; correct? 19 A. Correct. 20 Q. It also says that all three products are 21 manufactured by Roxane. Do you see that? 22 A. Yes.</p>
<p style="text-align: right;">79</p> <p>1 (WHEREUPON, a certain document was 2 marked Exhibit McIntyre 007, for identification.) 3 BY MR. FAUCI: 4 Q. This is a series of e-mails in the August 5 to October 1999 time frame. I'm going to direct 6 your attention to the third page of the document, 7 an e-mail -- feel free to read it all to get 8 familiarized at any time. I'm focusing on the 9 August 9, 1999, e-mail from Ann Maloney, sent at 10 1:18 p.m. Do you see that? 11 A. Yes. 12 MS. RIVERA: Yeah, Jim, you should make 13 sure you look at the whole document just to make 14 sure you're familiar with it. 15 Ready? 16 THE WITNESS: Yes. 17 BY MR. FAUCI: 18 Q. Ms. Maloney writes -- well, do you know 19 who Ms. Maloney is? 20 A. Yes. 21 Q. Who is she? 22 A. Well, she's no longer with the company.</p>	<p style="text-align: right;">81</p> <p>1 Q. Roxane manufactured Atrovent? 2 A. Yes. 3 Q. When did that start? Focusing on the 4 Atrovent UDV. 5 A. UDV, 1993, I believe. 6 Q. Did Roxane sell Atrovent to BIPI? 7 MS. RIVERA: Object to form. 8 BY THE WITNESS: 9 A. Yes, they would've sold the -- the 10 Atrovent UDV would've been sold to -- to -- to BIPI 11 by RLI. 12 BY MR. FAUCI: 13 Q. And then BIPI would turn around and 14 market and sell the products to customers under a 15 BIPI label? 16 A. That's correct. 17 Q. Were there written contracts evidencing 18 sales of Atrovent from Roxane to BIPI? 19 A. Yes, I believe there was a 1993 contract 20 manufacturing agreement. 21 Q. And that contract would have governed for 22 the life of Atrovent UDV?</p>

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22 (Pages 82 to 85)

<p style="text-align: right;">82</p> <p>1 A. My recollection is, it's a ten-year</p> <p>2 contract, renewable.</p> <p>3 Q. How was the price -- the sale price from</p> <p>4 Roxane to BIPI determined?</p> <p>5 A. Cost plus.</p> <p>6 Q. What does that mean?</p> <p>7 A. Manufacturing cost plus some -- some</p> <p>8 markup.</p> <p>9 Q. What does "manufacturing cost" mean?</p> <p>10 A. Manufacturing cost is the cost of all the</p> <p>11 ingredients plus labor and overhead.</p> <p>12 Q. Where did Roxane get the ingredients?</p> <p>13 A. The -- the active ingredient would have</p> <p>14 come from BII. The Ipratropium Bromide is the</p> <p>15 active ingredient.</p> <p>16 Q. And they would have purchased that from</p> <p>17 the German parent?</p> <p>18 A. Yes.</p> <p>19 Q. And they --</p> <p>20 A. Well, I can't be sure. It could've come</p> <p>21 from BIPI, 'cause BIPI purchased Ipratropium from</p> <p>22 other products, but -- but it's a BII product.</p>	<p style="text-align: right;">84</p> <p>1 THE VIDEOGRAPHER: We are back on the</p> <p>2 record at 10:50 a.m. with the start of tape number</p> <p>3 two.</p> <p>4 BY MR. FAUCI:</p> <p>5 Q. We were just talking about the process by</p> <p>6 which Roxane sold Atrovent to BIPI. Do you</p> <p>7 remember that?</p> <p>8 A. Yes.</p> <p>9 Q. And you said that it sold it at cost</p> <p>10 plus, do you recall that?</p> <p>11 A. Yes.</p> <p>12 Q. And we were trying to educate me and the</p> <p>13 jury on what cost plus meant. And you said that</p> <p>14 cost includes the ingredient costs, the labor costs</p> <p>15 and the overhead costs, do you recall that?</p> <p>16 A. Yes.</p> <p>17 Q. What's the plus?</p> <p>18 A. The margin.</p> <p>19 Q. Do you recall what the margin was?</p> <p>20 A. No. In the 1993 contract, we were unable</p> <p>21 to determine exactly what the margin would have</p> <p>22 been and how that pricing was determined for that -</p>
<p style="text-align: right;">83</p> <p>1 Q. So they would buy the -- the active</p> <p>2 ingredient -- Roxane would buy the active</p> <p>3 ingredient from another Boehringer Ingelheim</p> <p>4 entity?</p> <p>5 A. Yes.</p> <p>6 Q. And then Roxane would manufacture it?</p> <p>7 A. Yes.</p> <p>8 Q. And you said that the cost included what</p> <p>9 else besides the ingredient costs?</p> <p>10 A. Labor and overhead.</p> <p>11 Q. What's included in overhead?</p> <p>12 A. General plan overhead, depreciation of</p> <p>13 the equipment, depreciation of building, travel</p> <p>14 expenses. There's a whole list of items that are</p> <p>15 part of overhead.</p> <p>16 MR. FAUCI: I think we need to take a</p> <p>17 break.</p> <p>18 THE VIDEOGRAPHER: We are off the record</p> <p>19 at 10:39 a.m. with the end of tape number one.</p> <p>20 (WHEREUPON, a recess was had.)</p> <p>21 (WHEREUPON, MS. DOLAN left the</p> <p>22 deposition proceedings.)</p>	<p style="text-align: right;">85</p> <p>1 - and during that time frame.</p> <p>2 Q. So what was the result?</p> <p>3 A. I'm not sure I understand the question.</p> <p>4 Q. Oh, when you say you were unable to</p> <p>5 determine what the margin was, what do you mean?</p> <p>6 In preparation for today?</p> <p>7 A. Yes.</p> <p>8 Q. But there was a margin in the 1993</p> <p>9 contract that --</p> <p>10 A. I'd have to --</p> <p>11 Q. -- presumably?</p> <p>12 A. -- believe that there was, yes.</p> <p>13 Q. Do you know what the margin was at any</p> <p>14 point in time from 1996 to the present?</p> <p>15 A. Yes.</p> <p>16 Q. What was it, and when did it become that?</p> <p>17 A. We're talking specifically about</p> <p>18 Ipratropium Bromide UDV's?</p> <p>19 Q. Atrovent UDV.</p> <p>20 A. Atrovent -- Atrovent UDV's. Well,</p> <p>21 Atrovent UDV's were discontinued in 2003, so --</p> <p>22 Q. Okay.</p>

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23 (Pages 86 to 89)

<p style="text-align: right;">86</p> <p>1 A. -- but be -- up until 2003, the margin</p> <p>2 was based -- was 2.2 percent, based on full cost.</p> <p>3 Q. What does that mean, "based on full</p> <p>4 cost"?</p> <p>5 A. Well, it includes the cost of the active</p> <p>6 ingredient.</p> <p>7 Q. In addition to the labor and the</p> <p>8 overhead?</p> <p>9 A. Labor and the overhead, that's --</p> <p>10 Q. How was --</p> <p>11 A. -- correct.</p> <p>12 Q. -- the 2.2 percent figure arrived at?</p> <p>13 A. 2.2 percent on total cost is -- gives --</p> <p>14 gives the same absolute margin or absolute profit</p> <p>15 as ten percent on cost minus API.</p> <p>16 Q. What is "API"?</p> <p>17 A. Active pharmaceutical ingredient; that's</p> <p>18 the Ipratropium Bromide. The way we do things</p> <p>19 today is we charge ten percent on only third-party</p> <p>20 acquired materials.</p> <p>21 Q. Materials acquired from outside --</p> <p>22 A. Outside, nonaffiliate companies. If it</p>	<p style="text-align: right;">88</p> <p>1 Q. And I understand that the -- why the 2.2</p> <p>2 was used in place of the ten percent, but how was</p> <p>3 the 2.2 number arrived at?</p> <p>4 A. Because it gave the same -- as I</p> <p>5 mentioned, it gave the same level of profit as</p> <p>6 using ten percent on a cost excluded the API.</p> <p>7 Q. Was it negotiated?</p> <p>8 A. Yes, and later -- later validated by</p> <p>9 outside consultants.</p> <p>10 Q. And would this 2.2 percent or ten percent</p> <p>11 markup have been true on all the products that</p> <p>12 Roxane manufactured for Boehringer Ingelheim</p> <p>13 entities?</p> <p>14 A. Yes.</p> <p>15 Q. Let me show you a document marked Exhibit</p> <p>16 8.</p> <p>17 (WHEREUPON, a certain document was</p> <p>18 marked Exhibit McIntyre 008, for identification.)</p> <p>19 BY THE WITNESS:</p> <p>20 A. 1998 Expectation and Budget.</p> <p>21 BY MR. FAUCI:</p> <p>22 Q. It's a September 30, 1998, document, that</p>
<p style="text-align: right;">87</p> <p>1 has affiliate material in there, we subtract that</p> <p>2 from the total cost, because that affiliate</p> <p>3 material already has some markup, so we don't --</p> <p>4 it's not fair to mark it up twice.</p> <p>5 Q. Okay. So focusing on the Atrovent UDV,</p> <p>6 that there would be some markup applied to the</p> <p>7 ingredient that Roxane would have purchased from</p> <p>8 either BIPI or BII?</p> <p>9 A. Based -- yes, based on the way we do it</p> <p>10 now or did it in -- from -- up until 2003.</p> <p>11 Q. And so based on the way it was done up</p> <p>12 until 2003?</p> <p>13 A. Yes.</p> <p>14 Q. And because of that, the margin from</p> <p>15 Roxane to BIPI was only 2.2 percent, is that</p> <p>16 correct?</p> <p>17 A. At that time, yes. We don't know what it</p> <p>18 was back in '93.</p> <p>19 Q. When did it become 2.2 percent?</p> <p>20 A. About that time, 2001, 2002.</p> <p>21 Q. And it stayed that way until 2003?</p> <p>22 A. Yeah, we discontinued the product.</p>	<p style="text-align: right;">89</p> <p>1 says, "Commentary, 1998 Expectation, 1999 Budget,</p> <p>2 Roxane Laboratories, Incorporated." Take a moment</p> <p>3 to familiarize yourself with it, but I will be</p> <p>4 asking you questions about specific parts.</p> <p>5 A. Okay. Okay.</p> <p>6 Q. Are you familiar with this document?</p> <p>7 A. I've never seen this particular one, but</p> <p>8 I'm somewhat familiar with it, yes.</p> <p>9 Q. What is an expectation?</p> <p>10 A. Expectation is an update of the current</p> <p>11 year. So when you start out the year, you have</p> <p>12 your budget; later in the year, we do an update of</p> <p>13 what that budget is and what the expectation -- I</p> <p>14 mean, what we're gonna come in at at the end of --</p> <p>15 the end of the year. So it's our projection for</p> <p>16 what our actual costs or what our actual will be by</p> <p>17 December 31st.</p> <p>18 Q. So it's --</p> <p>19 A. So it has no actual numbers, per se, in</p> <p>20 there.</p> <p>21 Q. It's the revised budget based on the</p> <p>22 year-to-date?</p>

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32 (Pages 122 to 125)

<p style="text-align: right;">122</p> <p>1 wholesaler could go -- end up -- the sale could end  2 up at any number of different possible end  3 customers, whereas a sale to a chain customer, it's  4 only going to end up at that particular customer?  5 MS. RIVERA: Object to form and  6 foundation.  7 Go ahead.  8 BY THE WITNESS:  9 A. I don't know for certain, but I --  10 BY MR. FAUCI:  11 Q. And just so the record is clear, your  12 testimony is that the benefit to BIPI here is that  13 it was moving short dated inventory?  14 A. Correct.  15 MR. FAUCI: Can you mark this as Exhibit  16 15.  17 (WHEREUPON, a certain document was  18 marked Exhibit McIntyre 015, for identification.)  19 BY MR. FAUCI:  20 Q. Showing you what the court reporter has  21 marked as Exhibit 15. It's a Roxane Laboratories,  22 Inc. Unanimous Written Consent of Directors. The</p>	<p style="text-align: right;">124</p> <p>1 Q. Who would have compiled the profit and  2 loss statement and the balance sheet?  3 A. At this time frame, 1997, the --  4 Q. Year-end 1996.  5 A. The finance department for Roxane  6 Laboratories.  7 Q. Can you name people that would have been  8 involved?  9 A. Yeah. None of those people are with the  10 company any longer, but, yes, I can name them.  11 Q. Who?  12 A. John Swartz would have been the  13 controller for that side of the business that was -  14 - it would have been his department that created or  15 --  16 Q. If you turn to the statement of income,  17 it's a few pages in, it says, "Roxane Laboratories,  18 Inc.'s Statement of Income."  19 A. I have it.  20 Q. It shows the net sales at \$233,776,000  21 for the budget, do you see that?  22 A. Yes.</p>
<p style="text-align: right;">123</p> <p>1 first paragraph starting with "Resolved" states,  2 "Resolved that, the year-end closing for 1996 be,  3 and it hereby is, approved and the Balance Sheet  4 and Profit and Loss Statement of this Corporation  5 as of December 31, 1996, be, and they hereby are,  6 ratified and adopted in the form attached." Do you  7 see that?  8 A. Yes.  9 Q. What is the balance sheet?  10 A. A balance sheet is where you list your  11 assets and liabilities.  12 Q. And a profit and loss statement?  13 A. That's your income statement. It defines  14 your sales and net income.  15 Q. Would Roxane's Board of Directors approve  16 each of these for Roxane each year?  17 A. I don't know, but --  18 Q. Does it appear that Roxane's Board of  19 Directors is approving the balance sheet and profit  20 and loss statement for Roxane as of the fiscal year  21 1996?  22 A. I see that's what it says here, yes.</p>	<p style="text-align: right;">125</p> <p>1 Q. And then the actual for 1996 was  2 \$253,565,000?  3 A. Yes.  4 Q. A little further down is an entry,  5 "operating income." Can you explain what  6 "operating income" is?  7 A. Operating income is basically net sales  8 minus all of your operating expenses.  9 Q. And then all the way down is the net  10 income after tax, can you explain what that is?  11 A. It's your income after tax.  12 Q. It's the total income that Roxane  13 received for the year after --  14 A. After they pay taxes, yes.  15 Q. They pay taxes, and after they paid  16 everything else?  17 A. Yes.  18 MS. RIVERA: Object to form.  19 BY MR. FAUCI:  20 Q. And for 1996, Roxane had net income of  21 \$39 million, approximately?  22 A. Yes.</p>

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33 (Pages 126 to 129)

<p style="text-align: right;">126</p> <p>1 Q. Can you turn to the statement of</p> <p>2 financial position. What are retained earnings?</p> <p>3 A. Retained earnings is the cumulative</p> <p>4 effect -- or the accumulation of net income from</p> <p>5 various years.</p> <p>6 Q. And so for the year-end 1996, Roxane's</p> <p>7 retained earnings were \$131 million?</p> <p>8 A. Yes.</p> <p>9 Q. This would have included the \$39 million</p> <p>10 in income from 1996?</p> <p>11 A. Should have, yes.</p> <p>12 Q. Do you see slightly above that, it says,</p> <p>13 "Loans from affiliates"?</p> <p>14 A. Yes.</p> <p>15 Q. What is a loan from affiliate?</p> <p>16 A. And specifically, I don't know what this</p> <p>17 is. But typically it just represents funds that</p> <p>18 would have been loaned from either BIC for meet --</p> <p>19 to meet a particular purpose.</p> <p>20 Q. So they would have been loans from one</p> <p>21 Boehringer Ingelheim entity --</p> <p>22 A. Affiliate.</p>	<p style="text-align: right;">128</p> <p>1 show you Exhibit 16. This is a similar document,</p> <p>2 except it's from the year-end 1997.</p> <p>3 (WHEREUPON, a certain document was</p> <p>4 marked Exhibit McIntyre 016, for identification.)</p> <p>5 BY MR. FAUCI:</p> <p>6 Q. If you'd turn to the statement of income,</p> <p>7 it's a few pages in, does this reflect that</p> <p>8 Roxane's income from 1997 was \$40 million,</p> <p>9 approximately?</p> <p>10 A. Net income after tax?</p> <p>11 Q. Yes.</p> <p>12 A. Yes.</p> <p>13 Q. And if you turn the page to the statement</p> <p>14 of financial position --</p> <p>15 A. Uh-huh.</p> <p>16 Q. -- the retained earnings have increased</p> <p>17 to \$171 million, is that correct?</p> <p>18 A. Yes.</p> <p>19 Q. And if you look above, it's -- the loans</p> <p>20 to affiliates are now \$27 million, is that correct?</p> <p>21 MS. RIVERA: Wait, what page are you on?</p> <p>22 I'm sorry.</p>
<p style="text-align: right;">127</p> <p>1 Q. -- to Roxane?</p> <p>2 A. That's correct.</p> <p>3 Q. And here, they're \$31 million; correct?</p> <p>4 A. Correct.</p> <p>5 Q. Would these loans be supported by a note?</p> <p>6 A. I don't know.</p> <p>7 Q. Do you know if there'd be any written</p> <p>8 documentation underlying these loans?</p> <p>9 A. I don't know.</p> <p>10 Q. Who would set the terms of the loan?</p> <p>11 A. I don't know back into 1996.</p> <p>12 Q. Who would set them now?</p> <p>13 A. The terms are established by the LIBOR</p> <p>14 rate, that's the London interbank offer bank --</p> <p>15 exchange, and that's established at the beginning</p> <p>16 of each month with BI Corporate.</p> <p>17 Q. So that's the interest?</p> <p>18 A. Yes, that's the interest rate plus -- the</p> <p>19 affiliate companies would pay the LIBOR rate plus</p> <p>20 25 basis points or an extra quarter percent above</p> <p>21 that.</p> <p>22 Q. You could put that aside. I'm going to</p>	<p style="text-align: right;">129</p> <p>1 MR. FAUCI: Oh, I'm sorry. I'm on the</p> <p>2 statement of financial position. It's</p> <p>3 BOEH04600262.</p> <p>4 MS. RIVERA: Okay. And you're on which</p> <p>5 line?</p> <p>6 MR. FAUCI: I'm looking at "Loans from</p> <p>7 affiliates."</p> <p>8 MS. RIVERA: Okay.</p> <p>9 BY MR. FAUCI:</p> <p>10 Q. Do you see that that's \$27 million?</p> <p>11 A. Yes.</p> <p>12 Q. Would that reflect that some portion of</p> <p>13 the loans had been paid off in 1997?</p> <p>14 A. Yes.</p> <p>15 Q. Would that -- would Roxane's repayment of</p> <p>16 that loan be reflected as a debit somewhere on an</p> <p>17 income statement?</p> <p>18 MS. RIVERA: Object to form.</p> <p>19 BY THE WITNESS:</p> <p>20 A. No.</p> <p>21 BY MR. FAUCI:</p> <p>22 Q. What would that loan have been paid out</p>

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February 26, 2009

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40 (Pages 154 to 157)

<p style="text-align: right;">154</p> <p>1 A. Opina Project was the project -- the</p> <p>2 overriding project where the -- the manufacturing</p> <p>3 facility in Connecticut was to be shut down and the</p> <p>4 production moved to either our Mexico or our</p> <p>5 Columbus facility --</p> <p>6 Q. After --</p> <p>7 A. -- for --</p> <p>8 Q. -- that production line was shut down,</p> <p>9 was there any use made of it at all?</p> <p>10 A. Of the manufacturing facility?</p> <p>11 Q. In Connecticut, yes.</p> <p>12 A. Yes, they mostly turned it to office</p> <p>13 space.</p> <p>14 Q. Were you aware that certain expenses</p> <p>15 related to that project were booked on the -- in</p> <p>16 the accounts of Roxane?</p> <p>17 A. I was not aware that any Opina Project</p> <p>18 expenses were booked to Roxane.</p> <p>19 Q. Were -- were any allocations made out of</p> <p>20 the Opina Project to companies other than BIPI?</p> <p>21 A. Not to my knowledge.</p> <p>22 Q. At the time of the project, were any</p>	<p style="text-align: right;">156</p> <p>1 BIRI and BIPI to manufacture and distribute drugs.</p> <p>2 MS. RIVERA: Wait for a question.</p> <p>3 BY MS. POLLACK:</p> <p>4 Q. Prior to 2005, isn't it correct that</p> <p>5 Roxane marketing personnel marketed drugs that were</p> <p>6 owned by BIPI?</p> <p>7 MS. RIVERA: Object to form.</p> <p>8 BY THE WITNESS:</p> <p>9 A. Not to my knowledge.</p> <p>10 BY MS. POLLACK:</p> <p>11 Q. Are you familiar with a drug called</p> <p>12 Viramune?</p> <p>13 A. Yes.</p> <p>14 Q. Is that a product that's sold by BIPI?</p> <p>15 A. Yes.</p> <p>16 Q. Is that a product for which BIPI has the</p> <p>17 NDA?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Was that product for a period of</p> <p>20 time marketed by Roxane?</p> <p>21 A. Yes.</p> <p>22 Q. And was there a distribution agreement by</p>
<p style="text-align: right;">155</p> <p>1 drugs that were owned by BIPI -- and I'm talking</p> <p>2 about ownership of the drugs, I'm not talking about</p> <p>3 sales of a particular vial or something -- were</p> <p>4 they transferred to Roxane?</p> <p>5 MS. RIVERA: At the time of what project,</p> <p>6 Ros?</p> <p>7 MS. POLLACK: Opina Project.</p> <p>8 BY THE WITNESS:</p> <p>9 A. Was -- let me understand your question.</p> <p>10 Was ownership transferred?</p> <p>11 BY MS. POLLACK:</p> <p>12 Q. Of any --</p> <p>13 A. Was that --</p> <p>14 Q. -- drugs.</p> <p>15 A. -- your que -- I'm sorry.</p> <p>16 Q. Of any drugs that had belonged to BIPI.</p> <p>17 A. Not that I'm aware of.</p> <p>18 Q. Did Roxane have any contracts with BIPI</p> <p>19 to distribute BIPI drugs?</p> <p>20 A. During what time frame?</p> <p>21 Q. From 1996 to 2005.</p> <p>22 A. In 2005, there was an agreement between</p>	<p style="text-align: right;">157</p> <p>1 which that product, which was owned by BIPI but</p> <p>2 marketed by Roxane?</p> <p>3 A. There was a license agreement.</p> <p>4 Q. To Roxane?</p> <p>5 A. Yes. Roxane paid BIPI a 11 percent</p> <p>6 royalty.</p> <p>7 MS. RIVERA: And I'm just gonna object</p> <p>8 for the record that questions relating to the sale</p> <p>9 and transfer of Viramune are beyond the scope of</p> <p>10 the notice as we discussed with the DOJ during</p> <p>11 various meet and confers. So that to the extent</p> <p>12 Mr. McIntyre has knowledge of this, it would be</p> <p>13 based on his personal knowledge.</p> <p>14 MS. POLLACK: The objection is noted.</p> <p>15 BY MS. POLLACK:</p> <p>16 Q. Are you familiar with a drug called</p> <p>17 Oramorph?</p> <p>18 A. Yes.</p> <p>19 Q. Was that a drug that was marketed by</p> <p>20 Roxane at least prior to 2001?</p> <p>21 A. Yes.</p> <p>22 Q. Who owned the trademark for that drug?</p>

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41 (Pages 158 to 161)

<p style="text-align: right;">158</p> <p>1 A. My understanding is Roxane did.</p> <p>2 Q. Was the trademark for that drug ever</p> <p>3 owned by BIPI?</p> <p>4 A. Not to my knowledge.</p> <p>5 Q. If I ask you the same question for</p> <p>6 Roxicodone --</p> <p>7 A. Yes.</p> <p>8 Q. -- was that a drug that was marketed by</p> <p>9 Roxane prior to 2001?</p> <p>10 A. Yes.</p> <p>11 Q. Did Roxane own the trademark for that</p> <p>12 drug?</p> <p>13 A. Best of my knowledge, yes.</p> <p>14 Q. Let me ask you a question about the</p> <p>15 distribution agreement for Viramune. Do you know</p> <p>16 when, if at all, that distribution agreement ended?</p> <p>17 MS. RIVERA: Do you mean the licensing</p> <p>18 agreement, Ros?</p> <p>19 MS. POLLACK: Sorry, the licensing</p> <p>20 agreement.</p> <p>21 BY THE WITNESS:</p> <p>22 A. The licensing agreement ended in 2001.</p>	<p style="text-align: right;">160</p> <p>1 term -- the length -- by "term," you mean length of</p> <p>2 term, I assume.</p> <p>3 BY MS. POLLACK:</p> <p>4 Q. Right. Length of time.</p> <p>5 A. I -- I don't recall.</p> <p>6 Q. Do you recall if Roxane paid any fee to</p> <p>7 terminate that license agreement in 2001?</p> <p>8 A. No, but they -- they would just have</p> <p>9 discontinued paying the royalty.</p> <p>10 Q. Well, Mr. Fauci marked a number of year-</p> <p>11 end statements and balance sheets earlier today.</p> <p>12 Are you familiar with the fact that on occasion</p> <p>13 Roxane made short-term advances to affiliates?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. When would those kinds of advances</p> <p>16 be made?</p> <p>17 A. Well, just similar to the short-term</p> <p>18 loans, all of that, either advances or loans,</p> <p>19 they're all part of the cash pooling process that</p> <p>20 takes place with all the activity that goes on</p> <p>21 between the companies.</p> <p>22 Q. When there was a short-term advance to an</p>
<p style="text-align: right;">159</p> <p>1 BY MS. POLLACK:</p> <p>2 Q. And why was that?</p> <p>3 A. 2001 was the year that Roxane divested</p> <p>4 itself of the pain medication products, which</p> <p>5 included the Roxicodone and the Oramorph we just</p> <p>6 discussed. As a result of that divestment, the</p> <p>7 sales force that marketed those products was -- was</p> <p>8 eliminated; and as a result, BIPI took the product</p> <p>9 back. And at the same time, BIPI had a -- another</p> <p>10 aged related drug in development. And with that</p> <p>11 product coming online soon, they wanted -- they had</p> <p>12 the combination of those two A drugs that they</p> <p>13 would be marketing.</p> <p>14 Q. What was the term of the license</p> <p>15 agreement that Roxane had for Viramune; in other</p> <p>16 words, was it yearly, monthly?</p> <p>17 A. Viramune license agreement.</p> <p>18 MS. RIVERA: Object to form, beyond the</p> <p>19 scope of the notice.</p> <p>20 If you know.</p> <p>21 BY THE WITNESS:</p> <p>22 A. Yeah, I don't -- I don't recall what the</p>	<p style="text-align: right;">161</p> <p>1 affiliate made by Roxane, would there be any</p> <p>2 documentation relating to that advance?</p> <p>3 A. It would be in -- in the internal</p> <p>4 accounting records.</p> <p>5 Q. Would there be a note signed?</p> <p>6 A. I don't know if there'd be a note signed.</p> <p>7 Q. Would -- would there be any kind of</p> <p>8 letter agreement or contract re -- relating to that</p> <p>9 advance?</p> <p>10 A. I don't know.</p> <p>11 Q. Would there be interest associated with</p> <p>12 the short-term advance?</p> <p>13 A. Yes, there should be, based on that LIBOR</p> <p>14 rate we discussed earlier, on the affiliate loan.</p> <p>15 Q. When you say, "there should be," were</p> <p>16 there, in fact, interest terms associated with the</p> <p>17 short-term --</p> <p>18 A. Yes --</p> <p>19 Q. -- investment --</p> <p>20 A. -- there were interest terms.</p> <p>21 Q. And would the interest be paid by a</p> <p>22 bookkeeping line item?</p>

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42 (Pages 162 to 165)

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<p>1 A. If -- well, what do you mean by</p> <p>2 "bookkeeping line item" --</p> <p>3 Q. Yeah --</p> <p>4 A. -- please?</p> <p>5 Q. -- let me -- let me rephrase that.</p> <p>6 How would the interest payments be made?</p> <p>7 A. It would be made as part of the -- the</p> <p>8 accounting records.</p> <p>9 Q. Would actual cash transfer from one</p> <p>10 entity to another?</p> <p>11 A. Again, that's all part of the -- all of</p> <p>12 these loans and things are all part of the cash</p> <p>13 pooling and the -- and the -- and the netting of</p> <p>14 the -- the affiliate transactions that take place.</p> <p>15 Q. Could you describe what you mean by "the</p> <p>16 cash pooling."</p> <p>17 A. The -- Boehringer uses what's called a</p> <p>18 zero balance cash, so every -- every legal entity</p> <p>19 has their own bank account, so to speak. But at</p> <p>20 the end of the day, the -- the bank where all these</p> <p>21 accounts are just kind of sweeps all that cash into</p> <p>22 one pool. And then they still record the quant --</p>	<p>1 money in the pool was swept out daily and sent to</p> <p>2 Germany, you wouldn't have any reason to disagree</p> <p>3 with that?</p> <p>4 A. I wouldn't, no.</p> <p>5 Q. Can you take a look at Exhibit 8, that</p> <p>6 Mr. Fauci asked you about earlier.</p> <p>7 A. Yes.</p> <p>8 Q. And on page 23, it states that the "MDI</p> <p>9 and SM standard based upon bulk material being</p> <p>10 transferred to RLI at zero cost. This assumption</p> <p>11 is no longer valid."</p> <p>12 A. Yes.</p> <p>13 Q. Yes, you read that. Does that indicate</p> <p>14 to you that prior to a change being reflected in</p> <p>15 the budget, the cost of goods sold were being</p> <p>16 reflected at a zero cost --</p> <p>17 MS. RIVERA: Object to form.</p> <p>18 BY MS. POLLACK:</p> <p>19 Q. -- for the MDI and the SM products?</p> <p>20 A. And I think I testified earlier that I</p> <p>21 was unaware what the -- what the accounting change</p> <p>22 meant, so I couldn't speak to this.</p>
163	165
<p>1 the amount of cash by legal entities, but that --</p> <p>2 they pool it all together so that they can invest</p> <p>3 that money to earn interest.</p> <p>4 Q. Is that --</p> <p>5 A. It's much -- much --</p> <p>6 Q. -- money invested on behalf of BIC?</p> <p>7 A. It's invested on behalf of all the legal</p> <p>8 entities.</p> <p>9 Q. Is the money swept out of that pool daily</p> <p>10 and -- and sent out of the country?</p> <p>11 A. It's swept out of the pool daily. I</p> <p>12 don't know that it's swept -- or sent out of the</p> <p>13 country, no.</p> <p>14 Q. If Mr. --</p> <p>15 A. It remains --</p> <p>16 Q. -- Tetzner --</p> <p>17 A. -- in -- it remains in BIC's -- it</p> <p>18 remains in BIC's account or in fund with all the --</p> <p>19 with all the individual legal entities. It's kept</p> <p>20 track of by the legal entity account numbers, but</p> <p>21 it's all in one pool.</p> <p>22 Q. But if Mr. Tetzner had testified that the</p>	<p>1 Q. It doesn't say to you that whatever the</p> <p>2 accounting change meant, it was a change from zero</p> <p>3 to something else?</p> <p>4 MS. RIVERA: Object to form.</p> <p>5 BY THE WITNESS:</p> <p>6 A. I -- I see that's what it says, but I</p> <p>7 can't speak to it.</p> <p>8 BY MS. POLLACK:</p> <p>9 Q. Now, this statement also indicates that</p> <p>10 there's something called the self medication</p> <p>11 product.</p> <p>12 MS. RIVERA: Where are you, Ros?</p> <p>13 MS. POLLACK: Right on that same page on</p> <p>14 the --</p> <p>15 MS. RIVERA: Oh, okay.</p> <p>16 MS. POLLACK: -- standard cost of goods</p> <p>17 sold, self medication product.</p> <p>18 MS. RIVERA: I got it.</p> <p>19 MS. POLLACK: You see that?</p> <p>20 MS. RIVERA: Yep.</p> <p>21 Sorry, Jim.</p> <p>22 BY MS. POLLACK:</p>

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44 (Pages 170 to 173)

<p style="text-align: right;">170</p> <p>1 16, you'll see that, TXEX?</p> <p>2 A. Yes.</p> <p>3 Q. And -- and the anomalies in current</p> <p>4 structure progress -- or box, I should say, the</p> <p>5 third bullet point, "The Ridgefield plant is owned</p> <p>6 by BIPI;" is that correct?</p> <p>7 A. Prior to 2005, that's correct.</p> <p>8 Q. And what, if anything, was being</p> <p>9 manufactured at the Ridgefield plant?</p> <p>10 A. At this time, there was only one</p> <p>11 particular product that had never transferred as</p> <p>12 part of that Opina Project we discussed, so there</p> <p>13 was one manufacturing line still there.</p> <p>14 Q. What product was that?</p> <p>15 A. Combivent MDI inhalers.</p> <p>16 Q. Was that being manufactured by BIPI or</p> <p>17 Roxane?</p> <p>18 A. Well, prior to 2005, it was BIPI. As</p> <p>19 part of the reorg, it became Roxane -- or BIRI,</p> <p>20 excuse me, BIRI.</p> <p>21 Q. When you say it became part of BIRI,</p> <p>22 could you explain what you meant -- mean?</p>	<p style="text-align: right;">172</p> <p>1 Q. Is there any lease agreement between BIRI</p> <p>2 and BIPI with regard to that plant?</p> <p>3 A. No lease agreement, per se, but the space</p> <p>4 that we occupy we pay for through an allocation of</p> <p>5 -- basically would be an occupancy charge for the</p> <p>6 space that we occupy.</p> <p>7 Q. So the plant still belongs to BIPI?</p> <p>8 A. Yes, the facility belongs to BIPI.</p> <p>9 Q. Was there a reason that the facility was</p> <p>10 not transferred -- let me rephrase that.</p> <p>11 Was the reason that the ownership of that</p> <p>12 Ridgefield plant was not transferred to BIRI along</p> <p>13 with the equipment and the employees?</p> <p>14 A. They needed the space for office. The</p> <p>15 rest of the plant was converted to office space.</p> <p>16 Q. And whose office space is that?</p> <p>17 A. BIPI.</p> <p>18 Q. I want to ask one more question about the</p> <p>19 Viramune sale. You testified that Roxane paid a</p> <p>20 royalty to BIPI on sales that were made, is that</p> <p>21 correct?</p> <p>22 A. Up through 2001.</p>
<p style="text-align: right;">171</p> <p>1 A. Well, that the assets associated with</p> <p>2 that manufacturing were now part of the BIRI legal</p> <p>3 entity. The employees that produced the product</p> <p>4 were -- became BIRI legal entity employees.</p> <p>5 Q. How was the Ridgefield plant transferred</p> <p>6 to BIRI, if that's what happened?</p> <p>7 MS. RIVERA: Object to form.</p> <p>8 BY THE WITNESS:</p> <p>9 A. Well, the Ridgefield plant in and of</p> <p>10 itself was not. It was just the equipment to</p> <p>11 produce this particular product.</p> <p>12 BY MS. POLLACK:</p> <p>13 Q. What transferred to BIRI?</p> <p>14 A. I'm sorry?</p> <p>15 Q. I'm trying to understand your testimony.</p> <p>16 The equipment to produce the product was</p> <p>17 transferred to B-I-R-I?</p> <p>18 A. Yes, as well as the employees that</p> <p>19 produced the product.</p> <p>20 Q. Did the equipment and the employees</p> <p>21 remain in the Ridgefield plant?</p> <p>22 A. Yes.</p>	<p style="text-align: right;">173</p> <p>1 Q. Through 2001. How was the income from --</p> <p>2 from the sales booked?</p> <p>3 MS. RIVERA: I just want to put a</p> <p>4 continuing objection on the record to the -- beyond</p> <p>5 the scope of the Viramune discussion.</p> <p>6 BY MS. POLLACK:</p> <p>7 Q. How was -- was that booked by Roxane?</p> <p>8 A. The income from the sale -- from Viramune</p> <p>9 sales to third parties was booked by --</p> <p>10 Q. Yes.</p> <p>11 A. -- Roxane, yes.</p> <p>12 Q. Okay. I'd like to talk a little bit more</p> <p>13 about Exhibit 2. If you'll turn to the next page,</p> <p>14 page 17 at the bottom. And this is describing --</p> <p>15 and this is for the new legal entities that were</p> <p>16 proposed to be created, is that correct?</p> <p>17 A. Which -- which side are you looking at?</p> <p>18 Q. At the top of the page marked at the --</p> <p>19 A. The advan -- the one that says</p> <p>20 "Advantages"?</p> <p>21 Q. Yeah.</p> <p>22 A. Yes, this is talking that the advantages</p>

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<p style="text-align: right;">174</p> <p>1 of one of the options, the preferred option.</p> <p>2 Q. And the third bullet says, "Moves</p> <p>3 employees under the legal entity to which they</p> <p>4 report;" is that correct?</p> <p>5 A. That's correct.</p> <p>6 Q. So there were people who were employed by</p> <p>7 one company but reporting to another, is that what</p> <p>8 that means?</p> <p>9 A. Yes, specifically the manufacturing</p> <p>10 situation we just discussed.</p> <p>11 Q. Are you talking about the Combivent?</p> <p>12 A. Yes.</p> <p>13 Q. Well, weren't these people prior to 19 --</p> <p>14 I'm sorry, prior to 2005, who were manufacturing</p> <p>15 Combivent, BIPI employees?</p> <p>16 A. That's correct.</p> <p>17 Q. And that prior to 2005, Combivent was a</p> <p>18 BIPI drug; right?</p> <p>19 A. That's correct. It still is.</p> <p>20 Q. So why would you have to move them under</p> <p>21 the legal entity which -- to which they report when</p> <p>22 they were already under the legal entity to which</p>	<p style="text-align: right;">176</p> <p>1 people.</p> <p>2 Q. The next bullet point, there's a line,</p> <p>3 the oper -- the organization with the actual</p> <p>4 businesses, what's meant by that?</p> <p>5 A. Again, given that the overriding driver</p> <p>6 for the separation or for the reorganization was to</p> <p>7 separate the two legal entities or to separate the</p> <p>8 two businesses that were part of the Roxane legal</p> <p>9 entity, we wanted to get the organization aligned</p> <p>10 so that the manufacturing people were all part of</p> <p>11 the manufacturing organization and the sales and</p> <p>12 marketing people were part of the sales</p> <p>13 organization, so that those two businesses could be</p> <p>14 judged and -- their performance could be judged</p> <p>15 independently.</p> <p>16 Q. And what does the last bullet point say</p> <p>17 under "the advantages of the new legal entity"?</p> <p>18 A. At the -- way down at the bottom, the</p> <p>19 "allows for separation of liability"?</p> <p>20 Q. Yes. Could you read that into the</p> <p>21 record, please.</p> <p>22 A. "Allows for separation of liability for</p>
<p style="text-align: right;">175</p> <p>1 they reported?</p> <p>2 A. Because -- because the -- the Roxane</p> <p>3 manufacturing people were responsible for that</p> <p>4 manufacturing line. And those manufacturing people</p> <p>5 in BIPI were reporting to people in Roxane, or BIRI</p> <p>6 after the 2005 split. And that's why this comment</p> <p>7 says move people -- move people -- employees under</p> <p>8 the legal entity to which they report. That was</p> <p>9 one of the anomalies of the -- of our organization,</p> <p>10 that the 2005 organization wanted to -- wanted to</p> <p>11 correct. Remember, the overriding driver of the</p> <p>12 reorganization was to separate the two businesses</p> <p>13 that were part of the Roxane business prior to 2005</p> <p>14 and part of the Roxane legal entity.</p> <p>15 Q. But the Combivent was part of BIPI prior</p> <p>16 to 2005?</p> <p>17 A. That's correct, the manufacturing was,</p> <p>18 yes, but managed --</p> <p>19 Q. And --</p> <p>20 A. -- by BIRI people.</p> <p>21 Q. I'm sorry, I didn't hear that.</p> <p>22 A. But managed by Roxane manufacturing</p>	<p style="text-align: right;">177</p> <p>1 Marketing and Sales of Multisource and</p> <p>2 manufacturing of Multisource products." The intent</p> <p>3 of that bullet is to -- is to -- we're really just</p> <p>4 trying to align liability with the business, so if</p> <p>5 manufacturing had a -- if there was a manufacturing</p> <p>6 liability, the manufacturing legal entity was --</p> <p>7 was accountable for that. So we're just trying to</p> <p>8 align liability with the business.</p> <p>9 Q. Whereas, prior to that time, any of those</p> <p>10 liabilities would have been part of Roxane</p> <p>11 Laboratories, Inc., which had both the</p> <p>12 manufacturing and the sales for the multisource</p> <p>13 product; is that correct?</p> <p>14 A. Excuse -- I -- I didn't hear your entire</p> <p>15 question, so if you could repeat it, please.</p> <p>16 MS. POLLACK: Could you read it back?</p> <p>17 Did you get it --</p> <p>18 THE COURT REPORTER: You trailed off --</p> <p>19 MS. POLLACK: -- the court reporter?</p> <p>20 THE COURT REPORTER: -- at the end for</p> <p>21 me, too.</p> <p>22 BY THE WITNESS:</p>

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<p style="text-align: right;">186</p> <p>1 A. I confirmed that with Judy Waterer.</p> <p>2 BY MS. RIVERA:</p> <p>3 Q. Okay. There was also some discussion</p> <p>4 about some commitment agreements and rebates that</p> <p>5 were paid. Do you recall that discussion?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. It's in reference to Exhibit 17.</p> <p>8 MS. RIVERA: Oh, actually -- well, can</p> <p>9 you mark --</p> <p>10 MR. FAUCI: I'm thinking it's on 17.</p> <p>11 MS. RIVERA: It's what?</p> <p>12 MR. FAUCI: Nothing.</p> <p>13 MS. RIVERA: Oh, you know what --</p> <p>14 BY THE WITNESS:</p> <p>15 A. 13.</p> <p>16 BY MS. RIVERA:</p> <p>17 Q. Yeah, it's -- I'm looking at -- yeah, and</p> <p>18 set that aside for one minute. I wanted to mark</p> <p>19 one more document with you on the last issue.</p> <p>20 (WHEREUPON, a certain document was</p> <p>21 marked Exhibit McIntyre 026, for identification.)</p> <p>22 BY MS. RIVERA:</p>	<p style="text-align: right;">188</p> <p>1 Q. Is that --</p> <p>2 A. Yes.</p> <p>3 Q. -- referring to the substitution that we</p> <p>4 were discussing?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. He says, "I have listed below the</p> <p>7 process I -- as I understand it, which was</p> <p>8 implemented as of last Friday, October 25th." Can</p> <p>9 you read through that, and tell me whether that</p> <p>10 supports your testimony as to whether BIPI booked</p> <p>11 these sales, and there were no intra-company sales.</p> <p>12 MR. FAUCI: Objection to the form.</p> <p>13 BY THE WITNESS:</p> <p>14 A. I see in point three that Judy Waterer is</p> <p>15 going to communicate to the -- the BI Services</p> <p>16 Center which orders will be processed as BIPI</p> <p>17 invoices.</p> <p>18 BY MS. RIVERA:</p> <p>19 Q. And what does that mean?</p> <p>20 A. So that confirms -- to me, that confirms</p> <p>21 that BIPI was gonna book the sale for the -- that</p> <p>22 entry.</p>
<p style="text-align: right;">187</p> <p>1 Q. Okay. The court reporter's handed you</p> <p>2 what has been marked as Exhibit 26.</p> <p>3 MS. RIVERA: And for the record, the top</p> <p>4 -- it's an e-mail chain, the top e-mail is from</p> <p>5 Judy Waterer, dated November 4, 1996.</p> <p>6 BY MS. RIVERA:</p> <p>7 Q. Do you see that?</p> <p>8 A. Yes, I do.</p> <p>9 Q. Okay. If you would look to what looks</p> <p>10 like the third e-mail on this page from John Swartz</p> <p>11 to Ed Tupa.</p> <p>12 A. Yes, I have it.</p> <p>13 Q. Okay. And that's dated Thursday, October</p> <p>14 31st?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. If you could take a look at this,</p> <p>17 it says, "This is regarding the RLI sales of</p> <p>18 Ipratropium that will be filled with BIPI's</p> <p>19 Atrovent." That's referring to the substitution</p> <p>20 that we were discussing?</p> <p>21 MR. FAUCI: Objection to the form.</p> <p>22 BY MS. RIVERA:</p>	<p style="text-align: right;">189</p> <p>1 Q. Okay. If Roxane had booked the sale,</p> <p>2 what would you expect that to be?</p> <p>3 A. It would have referenced Roxane invoices.</p> <p>4 Q. Okay. Okay. Okay. Now moving on to the</p> <p>5 bundling and rebate agreements. I believe you were</p> <p>6 asked who booked and paid for the rebates on BIPI</p> <p>7 products that are a part of this -- these</p> <p>8 commitment and loyalty agreements. Do you recall</p> <p>9 that?</p> <p>10 A. Yes, I do.</p> <p>11 Q. Okay.</p> <p>12 (WHEREUPON, a certain document was</p> <p>13 marked Exhibit McIntyre 027, for identification.)</p> <p>14 BY MS. RIVERA:</p> <p>15 Q. What number is that? I'm sorry.</p> <p>16 A. 27.</p> <p>17 Q. Thank you. Okay. You've been handed a</p> <p>18 document, which is dated -- I'm sorry, which has</p> <p>19 been marked Exhibit 27. And in the first paragraph</p> <p>20 there, it says, "After discussing the one percent</p> <p>21 rebate for the branded product and in doing an</p> <p>22 analysis," et cetera, "Shelly and I agree that the</p>

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<p style="text-align: right;">190</p> <p>1 one percent rebate should be charged against the</p> <p>2 Roxane P&amp;L."</p> <p>3 What does that indicate to you in terms</p> <p>4 of how rebates for BIPI products that were part of</p> <p>5 Roxane loyalty or commitment agreements were</p> <p>6 booked?</p> <p>7 A. They're going to be paid for by Roxane.</p> <p>8 Q. Okay. And were you able to do any other</p> <p>9 research to confirm that this is the way it worked</p> <p>10 for -- for all of these various agreements?</p> <p>11 A. Yes, I confirmed this with Judy Waterer.</p> <p>12 Q. Okay. So BIPI was not paying the rebate</p> <p>13 even though the rebate was based on BIPI products?</p> <p>14 A. That's correct.</p> <p>15 MR. FAUCI: Objection to form.</p> <p>16 BY MS. RIVERA:</p> <p>17 Q. Okay. You were also asked some questions</p> <p>18 about dividend payments from Roxane to BIC. Do you</p> <p>19 recall that discussion?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. What is the purpose of dividend</p> <p>22 payments?</p>	<p style="text-align: right;">192</p> <p>1 A. Yes, I did.</p> <p>2 Q. Okay. Based on your knowledge of</p> <p>3 Roxane's financial condition and the -- the payment</p> <p>4 of these dividends, do you believe that any of the</p> <p>5 dividend payments that were made by Roxane to BIC</p> <p>6 during the relevant time frame left Roxane</p> <p>7 undercapitalized?</p> <p>8 MR. FAUCI: Objection --</p> <p>9 MS. POLLACK: Objection --</p> <p>10 MR. FAUCI: -- to the form.</p> <p>11 BY THE WITNESS:</p> <p>12 A. No.</p> <p>13 BY MS. RIVERA:</p> <p>14 Q. Okay. And why not?</p> <p>15 A. 'Cause --</p> <p>16 MR. FAUCI: Objection to the form.</p> <p>17 BY THE WITNESS:</p> <p>18 A. They continued to have positive retained</p> <p>19 earnings, and they also had positive working</p> <p>20 capitals to fund their day-to-day operations.</p> <p>21 BY MS. RIVERA:</p> <p>22 Q. Okay. And during the time that you were</p>
<p style="text-align: right;">191</p> <p>1 A. Typically it's to return part of the</p> <p>2 investment to the parent company.</p> <p>3 Q. Okay. And is this a normal procedure</p> <p>4 between subsidiary and parent companies?</p> <p>5 A. Yes.</p> <p>6 MR. FAUCI: Objection to form.</p> <p>7 BY THE WITNESS:</p> <p>8 A. Yes.</p> <p>9 BY MS. RIVERA:</p> <p>10 Q. Okay. Based on your -- well, let me ask</p> <p>11 you this: Based on your -- sorry, strike that</p> <p>12 again.</p> <p>13 You were a member of Roxane's finance</p> <p>14 department from 1996 to 2005, is that correct?</p> <p>15 A. That's correct.</p> <p>16 Q. Okay. And as a member of Roxane's</p> <p>17 finance department, were you familiar with Roxane's</p> <p>18 financial condition during that time frame?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And in preparation for this</p> <p>21 deposition, did you review Roxane's financial</p> <p>22 statements over time?</p>	<p style="text-align: right;">193</p> <p>1 in Roxane's financial department, do you know if</p> <p>2 Roxane -- you know, during the entire time they --</p> <p>3 that you were in Roxane's financial department, if</p> <p>4 you have -- if Roxane had sufficient working</p> <p>5 capital to fund its day-to-day operations?</p> <p>6 MR. FAUCI: Objection to the form.</p> <p>7 BY THE WITNESS:</p> <p>8 A. Yes.</p> <p>9 BY MS. RIVERA:</p> <p>10 Q. Okay. Was there ever a time when Roxane</p> <p>11 was unable to pay its day-to-day obligations during</p> <p>12 this time period?</p> <p>13 A. No.</p> <p>14 MR. FAUCI: Objection to the form.</p> <p>15 BY MS. RIVERA:</p> <p>16 Q. Okay.</p> <p>17 MS. RIVERA: What's your objection?</p> <p>18 MR. FAUCI: Can you repeat the question?</p> <p>19 THE COURT REPORTER: "Question: Okay" --</p> <p>20 MR. FAUCI: I can read it.</p> <p>21 The objection is that I'm very unclear</p> <p>22 what you mean by the phrase "day-to-day"</p>

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<p style="text-align: right;">194</p> <p>1 operations," so I would say it's vagueness.</p> <p>2 MS. RIVERA: Okay.</p> <p>3 BY MS. RIVERA:</p> <p>4 Q. Are you aware -- let me just try to fix</p> <p>5 it, even though I disagree with the -- do you</p> <p>6 understand what I mean by "day-to-day operations,"</p> <p>7 Mr. McIntyre?</p> <p>8 A. Yes.</p> <p>9 Q. And how would you describe the day-to-day</p> <p>10 operations of Roxane?</p> <p>11 A. To be able to pay our bills, pay our --</p> <p>12 our vendors, pay our employees, purchase --</p> <p>13 purchase ingredients, raw materials for -- for</p> <p>14 manufacturing.</p> <p>15 Q. Okay. Okay. So let me just ask it</p> <p>16 again. Based on that day-to-day -- based on that</p> <p>17 definition of -- of day-to-day business, do you</p> <p>18 believe based on your familiarity with Roxane's</p> <p>19 financial con -- condition and your review of</p> <p>20 Roxane's financial statements that Roxane had</p> <p>21 sufficient capital to pay its day-to-day expenses -</p> <p>22 -</p>	<p style="text-align: right;">196</p> <p>1 A. Yes, there is a general rule, guideline</p> <p>2 from our corporate parent, that the debt to equity</p> <p>3 ratio shouldn't exceed a certain amount. If it --</p> <p>4 if it exceeded a certain amount, then dividends</p> <p>5 would not be paid.</p> <p>6 BY MS. RIVERA:</p> <p>7 Q. Okay. Then there were some questions</p> <p>8 specific to a dividend that was paid in 2002 from</p> <p>9 Roxane to BIC, I think, in the amount of \$320</p> <p>10 million. Do you remember that?</p> <p>11 A. Yes, I do.</p> <p>12 Q. Okay. Were you able to determine why</p> <p>13 that dividend payment was larger than dividend</p> <p>14 payments that had been paid in the past, that Mr.</p> <p>15 Fauci also referred you to?</p> <p>16 A. Yes. There was a couple of things that</p> <p>17 happened in the prior year that -- that resulted in</p> <p>18 larger -- more income for Roxane. First, we sold</p> <p>19 the palliative care business, so the income was --</p> <p>20 the income that Roxane reported in 2001 was a lot</p> <p>21 larger than had been expected; two, there were some</p> <p>22 tax issues pending that allowed us -- that was</p>
<p style="text-align: right;">195</p> <p>1 MS. POLLACK: Objection as to form.</p> <p>2 MS. RIVERA: I'm not done yet.</p> <p>3 MS. POLLACK: Sorry.</p> <p>4 MS. RIVERA: It's okay.</p> <p>5 BY MS. RIVERA:</p> <p>6 Q. To pay its day-to-day expenses and fund</p> <p>7 its day-to-day operations from 1996 through 2005?</p> <p>8 MS. POLLACK: Objection to form.</p> <p>9 BY THE WITNESS:</p> <p>10 A. Yes.</p> <p>11 BY MS. RIVERA:</p> <p>12 Q. Okay. And this is your view even though</p> <p>13 at certain points of time Roxane paid dividends to</p> <p>14 its parent comp -- corporation?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Do you have any understanding</p> <p>17 whether the capitalization and Roxane's ability to</p> <p>18 pay and fund its -- its day-to-day operations was</p> <p>19 taken into account when determining whether</p> <p>20 dividends should be paid to -- to BIC or not?</p> <p>21 MR. FAUCI: Objection.</p> <p>22 BY THE WITNESS:</p>	<p style="text-align: right;">197</p> <p>1 gonna allow us to pay some additional dividends;</p> <p>2 and, three, we hadn't paid a dividend in -- since</p> <p>3 2000, so this -- the payment in 2002 was -- was a</p> <p>4 catch-up for a two-year period.</p> <p>5 Q. Okay.</p> <p>6 (WHEREUPON, a certain document was</p> <p>7 marked Exhibit McIntyre 028, for identification.)</p> <p>8 BY MS. RIVERA:</p> <p>9 Q. Okay. Okay. The court reporter has</p> <p>10 handed you what's been marked as Exhibit 28. Can</p> <p>11 you tell me what this is?</p> <p>12 A. This is the 2001 year-end financial</p> <p>13 commentary or commentary to the financial</p> <p>14 statements.</p> <p>15 Q. Okay. Are these documents that Roxane</p> <p>16 generates in its normal course of business, or did</p> <p>17 at this point in time?</p> <p>18 A. Yes.</p> <p>19 Q. And you're familiar with these kinds of</p> <p>20 documents?</p> <p>21 A. Yes.</p> <p>22 Q. Okay.</p>

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<p style="text-align: right;">198</p> <p>1 MR. FAUCI: Objection to form.</p> <p>2 BY MS. RIVERA:</p> <p>3 Q. If you would turn to the page that ends -</p> <p>4 - if you see the BOEH numbers there --</p> <p>5 A. Uh-huh.</p> <p>6 Q. -- that ends in 452, it's a -- it's right</p> <p>7 -- it's a commentary right after the income</p> <p>8 statement.</p> <p>9 A. Total company income statement, right?</p> <p>10 Q. Yes.</p> <p>11 A. Yes, okay. I have it.</p> <p>12 Q. Okay. And it says, "2001 actual income</p> <p>13 is 175 million," and it says under that, attribute</p> <p>14 -- "Attributable to the Elan deal for the purchase</p> <p>15 of pain/palliative care products line." Can you</p> <p>16 tell me what that means in terms of how much Roxane</p> <p>17 was paid for its divestment of the Elan palliative</p> <p>18 care line?</p> <p>19 A. That -- well, this -- this would</p> <p>20 represent the amount of income that they were made</p> <p>21 -- made on this sale of the -- the line.</p> <p>22 Q. Okay. So is that the same as saying that</p>	<p style="text-align: right;">200</p> <p>1 MR. FAUCI: Objection --</p> <p>2 BY THE WITNESS:</p> <p>3 A. -- correct.</p> <p>4 MR. FAUCI: -- to the form.</p> <p>5 BY MS. RIVERA:</p> <p>6 Q. Okay.</p> <p>7 A. That is correct.</p> <p>8 Q. Were you able to determine, Mr. McIntyre,</p> <p>9 whether the payment of the \$320 million dividend in</p> <p>10 2002 had anything to do with pending subpoenas or</p> <p>11 litigation at Roxane?</p> <p>12 MR. FAUCI: Objection to the form.</p> <p>13 BY THE WITNESS:</p> <p>14 A. Yes, I was able to determine from</p> <p>15 conversations with Frank Palmer that it had nothing</p> <p>16 to do with any litigation.</p> <p>17 BY MS. RIVERA:</p> <p>18 Q. Okay. Okay. Just a few general</p> <p>19 questions. Between the time you were in Roxane's</p> <p>20 financial department, between 1996 and 2005, did</p> <p>21 you view Roxane as a separate company from BIC and</p> <p>22 BIPI?</p>
<p style="text-align: right;">199</p> <p>1 Roxane made \$175 million from the divestiture of</p> <p>2 the Elan products?</p> <p>3 A. Yes.</p> <p>4 MR. FAUCI: Objection to form.</p> <p>5 BY MS. RIVERA:</p> <p>6 Q. I mean the divestiture of the products to</p> <p>7 -- to Elan.</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And can you tell from your</p> <p>10 knowledge and from your review of the documents</p> <p>11 whether that income was budgeted for in -- for</p> <p>12 Roxane for 2001?</p> <p>13 A. I could -- yes, it was -- it was not</p> <p>14 budgeted for.</p> <p>15 Q. Okay. So is this consistent with your</p> <p>16 testimony that in 2001 Roxane had a unbudgeted</p> <p>17 influx of income in the amount of \$175 million?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And that contributed in part to</p> <p>20 the reason why the 2002 dividend payment was</p> <p>21 higher?</p> <p>22 A. That would be --</p>	<p style="text-align: right;">201</p> <p>1 MR. FAUCI: Objection --</p> <p>2 BY THE WITNESS:</p> <p>3 A. Yes.</p> <p>4 MS. RIVERA: -- to the form.</p> <p>5 BY THE WITNESS:</p> <p>6 A. Yes.</p> <p>7 MS. RIVERA: What's your objection?</p> <p>8 MR. FAUCI: It calls for a legal</p> <p>9 conclusion.</p> <p>10 BY MS. RIVERA:</p> <p>11 Q. Okay. In your view, was Roxane a</p> <p>12 separate company from BIC and BIPI?</p> <p>13 MR. FAUCI: Same objection.</p> <p>14 BY THE WITNESS:</p> <p>15 A. Yes, they were a separate legal entity.</p> <p>16 BY MS. RIVERA:</p> <p>17 Q. Okay. And following the reorganization</p> <p>18 in 2005, was it your opinion that BIRI was a</p> <p>19 separate -- or did you consider BIRI a separate</p> <p>20 company from BIC, BIPI and RLI at that point?</p> <p>21 A. Yes, it was -- again, it was a separate</p> <p>22 legal entity, separate tax ID.</p>

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<p style="text-align: right;">202</p> <p>1 Q. Okay. And after the 2005 reorganization,</p> <p>2 did you consider Roxane Laboratories as a separate</p> <p>3 entity, as a separate corporation from BIC, BIPI</p> <p>4 and BIRI?</p> <p>5 A. Yes.</p> <p>6 MS. POLLACK: Objection to form.</p> <p>7 BY MS. RIVERA:</p> <p>8 Q. Okay. And just so it's clear on the</p> <p>9 record, between 1996 and 2005, did Roxane have</p> <p>10 separate financial statements from BIC and BIPI?</p> <p>11 A. Yes.</p> <p>12 Q. Did it have a separate forecasting and</p> <p>13 budget procedure?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And after 2005, do you know if</p> <p>16 both BIRI and Roxane continued to have separate</p> <p>17 financial statements and budgets, both from each</p> <p>18 other and from BIC and BIPI?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. Okay. You had a short discussion</p> <p>21 with Mr. Fauci about some manufacturing that Roxane</p> <p>22 did for BIPI. Do you recall that?</p>	<p style="text-align: right;">204</p> <p>1 Q. Okay. And what does it say the term of</p> <p>2 that agreement was?</p> <p>3 A. Ten years.</p> <p>4 Q. Okay. And this is one of the contracts</p> <p>5 you were referring to earlier in your testimony?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. If you would look at Exhibit 30,</p> <p>8 and tell me what that is.</p> <p>9 A. This is the contract manufacturing</p> <p>10 agreement between BIPI and BIRI.</p> <p>11 Q. And this one's dated September of two</p> <p>12 thousand --</p> <p>13 A. Two thousand --</p> <p>14 Q. -- and five?</p> <p>15 A. That's correct.</p> <p>16 Q. Okay. And at this point, this was after</p> <p>17 the corporate reorganization?</p> <p>18 MR. FAUCI: Objection to form.</p> <p>19 BY THE WITNESS:</p> <p>20 A. That's correct.</p> <p>21 BY MS. RIVERA:</p> <p>22 Q. Okay. And so BIRI has now taken over the</p>
<p style="text-align: right;">203</p> <p>1 A. Yes.</p> <p>2 Q. And I believe -- sorry. I believe he</p> <p>3 asked you if there were manufacturing or contracts</p> <p>4 that governed the agreements between RLI and BIPI</p> <p>5 with regard to that manufacturing. Do you recall</p> <p>6 that?</p> <p>7 A. That's correct, yes.</p> <p>8 Q. Okay.</p> <p>9 (WHEREUPON, certain documents were</p> <p>10 marked Exhibit McIntyre 029, Exhibit McIntyre 030 &amp;</p> <p>11 Exhibit McIntyre 031, for identification.)</p> <p>12 BY MS. RIVERA:</p> <p>13 Q. Okay. The court reporter's handed you</p> <p>14 what have been marked as Exhibits 29, 30 and 31.</p> <p>15 If you would look at Exhibit 29 first, and can you</p> <p>16 tell me what this is?</p> <p>17 A. This is the 1993 contract manufacturing</p> <p>18 agreement between Roxane Laboratories and BIPI.</p> <p>19 Q. Okay. And on the second page of that</p> <p>20 agreement, there's a section called, "Term of</p> <p>21 Agreement"?</p> <p>22 A. Yes.</p>	<p style="text-align: right;">205</p> <p>1 manufacturing for BIPI?</p> <p>2 MR. FAUCI: Objection to form.</p> <p>3 BY THE WITNESS:</p> <p>4 A. Yes.</p> <p>5 BY MS. RIVERA:</p> <p>6 Q. Okay. And if you would look at -- well,</p> <p>7 what ends in the Bates No. 315, a section called,</p> <p>8 "Payments." I think the section starts on the page</p> <p>9 before.</p> <p>10 A. I have it.</p> <p>11 Q. Okay. Okay. And the -- the Section 7.2,</p> <p>12 the last sentence says, "Thereafter, the parties</p> <p>13 shall set the prices for drug products not less</p> <p>14 than once per year based on BIRI's cost plus ten</p> <p>15 percent." Do you see that?</p> <p>16 A. Yes, I do.</p> <p>17 Q. Okay. Is that consistent with your</p> <p>18 testimony that the prices for the manufacturing, at</p> <p>19 least as of 2005, that BIRI charged to BIPI was</p> <p>20 based on cost plus ten percent?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And I -- you may have gone over</p>

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<p style="text-align: right;">206</p> <p>1 this -- I think you did a little bit with Mr. Fauci</p> <p>2 -- but can you tell me, just so it's clear, where</p> <p>3 that ten percent figure came from?</p> <p>4 A. The ten percent was arrived at earlier</p> <p>5 con -- contract negotiations between BIRI and BII</p> <p>6 in Germany, and that was later validated by outside</p> <p>7 consulting firm to be an arm's length rate.</p> <p>8 Q. Okay. So this ten percent had been used</p> <p>9 in prior contracts --</p> <p>10 A. Yes.</p> <p>11 Q. -- between affiliate companies?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And you said it was validated by</p> <p>14 third-party consultants. Can you explain that to</p> <p>15 me?</p> <p>16 A. Yeah. The third-party consultant in 2004</p> <p>17 did a study of comparable companies that had -- had</p> <p>18 in the margins that they made, and they felt that</p> <p>19 ours was equivalent to those that they had studied,</p> <p>20 and that it was an arm's length rate. And</p> <p>21 subsequent to 2004, they -- on a yearly basis, they</p> <p>22 would -- they would issue an opinion on that again.</p>	<p style="text-align: right;">208</p> <p>1 entered into between Roxane and BIRI at this point</p> <p>2 in time?</p> <p>3 A. Because now BIRI was going to act as the</p> <p>4 contract manufacturer for Roxane Laboratories now</p> <p>5 that they were separate companies.</p> <p>6 Q. Okay. And if you would again turn to the</p> <p>7 payment section, which is section seven, at the</p> <p>8 bottom of -- ends in Bates No. 299. What were the</p> <p>9 price terms for the contract between BIRI and RLI?</p> <p>10 A. Cost plus ten percent.</p> <p>11 Q. Okay. And just for the record, you may</p> <p>12 have said this, but just so it's clear, that this</p> <p>13 contract manufacturing agreement is dated April 4,</p> <p>14 2005?</p> <p>15 A. That's correct.</p> <p>16 MS. RIVERA: Okay. Let me take two</p> <p>17 minutes and just make sure that I'm done, so bore</p> <p>18 you for two seconds.</p> <p>19 THE VIDEOGRAPHER: Should I change tape,</p> <p>20 or are you going to have more?</p> <p>21 MS. RIVERA: Should we just change --</p> <p>22 yeah, oh --</p>
<p style="text-align: right;">207</p> <p>1 So that was reviewed on an annual basis to see that</p> <p>2 it remained an arm's length rate.</p> <p>3 Q. Okay. And the comparable agreements they</p> <p>4 looked at were other contract manufacturing</p> <p>5 pharmaceutical agreements?</p> <p>6 A. Yes.</p> <p>7 MR. FAUCI: Objection to form.</p> <p>8 BY THE WITNESS:</p> <p>9 A. Yes.</p> <p>10 BY MS. RIVERA:</p> <p>11 Q. And do you know who the third-party</p> <p>12 consultant was that performed those evaluations?</p> <p>13 A. Economic consulting firm called Valentine</p> <p>14 and Barbaro.</p> <p>15 Q. Okay. And then if you would look at</p> <p>16 Exhibit 31. And can you tell me what this document</p> <p>17 is?</p> <p>18 A. This is the contract manufacturing</p> <p>19 agreement between Roxane Laboratories and BIRI at</p> <p>20 the time of the -- the split.</p> <p>21 Q. Okay. And why -- why was there a</p> <p>22 contract manufacturing agreement that needed to be</p>	<p style="text-align: right;">209</p> <p>1 MS. DENTON: Might as well.</p> <p>2 MS. RIVERA: Are you going to have any</p> <p>3 follow-up or --</p> <p>4 MR. FAUCI: Why don't we take a break out</p> <p>5 there, and we'll talk --</p> <p>6 MS. RIVERA: Okay.</p> <p>7 MR. FAUCI: -- whether if you're done</p> <p>8 we're gonna have more --</p> <p>9 MS. RIVERA: Okay.</p> <p>10 MR. FAUCI: -- and I guess --</p> <p>11 MS. RIVERA: Yeah.</p> <p>12 THE VIDEOGRAPHER: We're off the record</p> <p>13 at 3:01 p.m.</p> <p>14 (WHEREUPON, a recess was had.)</p> <p>15 (WHEREUPON, MR. WINGET-HERNANDEZ</p> <p>16 disconnected telephonic communication.)</p> <p>17 THE VIDEOGRAPHER: We are back on the</p> <p>18 record at 3:11 p.m.</p> <p>19 MS. RIVERA: I have nothing further right</p> <p>20 now.</p> <p>21 MR. FAUCI: I have a few very quick</p> <p>22 questions.</p>

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